

CRM-M-38199-2013

[1]

In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 01.10.2015

Gurmeet Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sherry K. Singla, Advocate,
for the petitioners.

Dr. Deepa Singh, Addl. AG, Punjab.

None for respondent No.2.

SABINA, J.

Petitioners have filed this petition challenging the order dated 22.07.2013.

Learned counsel for the petitioners has submitted that after thorough investigation of the case, cancellation report was submitted by the police. The Magistrate without recording preliminary evidence of the complainant had ordered the summoning of the petitioners vide impugned order dated 22.07.2013.

Learned State counsel, on the other hand, has

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opposed the petition.

None has appeared on behalf of respondent No.2.

Impugned order reads as under:-

“Arguments heard. Record perused.

Perusal of file reveals that cancellation report was presented on 29.11.2011 and complainant Nachhattar Singh suffered statement that he does not agree with cancellation report and he had filed protest petition on the Court. Perusal of file reveals that on 14.6.2010 Kanungo and Patwari conducted demarcation of land of Nachhattar Singh and 'Katcha Thaddas' were laid down. However, during investigation it was found that these 'Thaddas' were destroyed due to rainy season and accused had not destroyed the same. However, complainant has stated that he does not agree with this cancellation report and has filed a separate protest petition.

Learned counsel for the complainant placed reliance on **S.K.Shukla & Ors. Vs. State of U.P. & Ors. 2006(1) RCR (Criminal) 25**, in which it was held by the Hon'ble Supreme Court of India that Courts are free to assess whether prima facie case

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are made out or not and if Court is satisfied it can reject the application of PP to withdraw the case.

From evidence placed on file this Court is of the considered opinion that accused Jagrup Singh, Hardev Singh, Gurdarshan Singh, Gurmit Singh, Gurnek Singh have destroyed these 'Thaddas'. Let they are ordered to be summoned for their committing offence punishable under section 283 read with Section 149 IPC, for 14.8.2013. Learned APP is directed to file list of witnesses on or before dated fixed.”

A perusal of the above order reveals that the case was duly investigated by the police and allegations levelled by the complainant were found to be false. During investigation, it had transpired that the *thaddas* were destroyed due to rainy season and the accused had not destroyed the same. The complainant had filed the protest petition. Once the cancellation report is presented before the Magistrate, the Magistrate has either the power to accept the same or send the case back for further investigation or take cognizance of the matter. Magistrate, however, without recording the preliminary evidence of the complainant ordered the summoning of the accused. In case, the Magistrate wanted to

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take cognizance of the matter, it was necessary to record the preliminary evidence of the complainant.

In these circumstances, it would be just and expedient to set aside the impugned order dated 22.07.2013 and direct the Magistrate to pass a fresh order in accordance with law.

Accordingly, this petition is allowed. Impugned order dated 22.07.2013 is set aside. Learned Magistrate is directed to pass a fresh order in accordance with law.

October 01, 2015
kapil

(SABINA)
JUDGE