

**Sr. No.238
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM No. M-36536 of 2014 (O&M)

Date of Decision: 30.10.2015

Dayal Singh Sarpanch and others

...Petitioners

Vs.

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Present: Mr. R.C.Sharma, Advocate,
for the petitioners.

Ms. Anmol Grewal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J.

Petitioners seek quashing of impugned FIR No.137 dated 25.07.2014, registered under Sections 379 of Indian Penal Code (for short 'IPC'), 21 of Mines Act, at Police Station Machhiwara, District Ludhiana (Annexure P-12) and the consequential criminal proceedings arising therefrom, by way of instant petition under Section 482 Cr.P.C.

Notice of motion was issued and pursuant thereto reply was filed on behalf of the respondent-State.

Learned counsel for the petitioners submits that in view of the resolution (Annexure P-1), letter dated 29.11.2013 of Mining Officer (Annexure P-2), letter dated 26.11.2013 written by Block

Development Panchayat Officer, Machhiwara to District Industry Officer, Ludhiana (Annexure P-3) and further official communications contained (Annexures P-4 to P-11) would make it crystal clear that even if the allegations levelled against the petitioners in the impugned FIR are taken to be true to their face value, still no offence of any kind whatsoever would be made out against the petitioners. He further submits that in compliance of the resolution (Annexure P-1), petitioners were bound to perform their duty in accordance with law and only that is what, the petitioners did. Some earth was dug with a view to fill the plot for Dharmshala. Neither there was any occasion for the petitioners to take away any mineral nor it was available up to the depth the land was dug. The petitioners, as a matter of fact, took away no mineral whatsoever, as wrongly alleged against them. He concluded by submitting that since the allegations against the petitioners are absurd on the face of it and there is not even a remotest chance of conviction, permitting the criminal proceedings to continue any further would amount to abuse of process of Court. He prays for quashing the impugned FIR as well as the criminal proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State submits that petitioners have tried to take away the mineral which vested in the State without any licence or permit. He further submits that since such cases were increasing on large scale basis in the respondent-State, the impugned FIR was rightly registered against the petitioners and they are liable to face the criminal trial. He prays for dismissal of

the present petition.

After hearing learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that keeping in view the peculiar fact situation obtaining in the present case, instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A bare combined reading of the numerous official communications and the impugned FIR, would leave no doubt that the petitioners, as a matter of fact, committed no offence, including the one alleged against them in the impugned FIR. It is so said because, very many authorities of the respondent-State itself, have made it clear that there are more than one official communications which show that petitioners never indulged in the commission of theft of the mineral, which has been wrongly alleged against them by way of impugned FIR.

It seems that since a large scale illegal mining was going on in the respondent-State and this Court issued appropriate directions on 29.04.2014 in CWP No.7519 of 2014, to take appropriate action, in accordance with law, within a period of 3 months, instant FIR came to be registered against the petitioners as well, without any application of mind. The authorities of the respondent-State were duty bound to ensure that no FIR is registered even against such persons who have committed no offence. It seems to be the reason that later on the authorities of the

respondent-State realized their mistake, while issuing numerous official communications pointing out that the petitioners committed no offence.

The above said seems to be the reason that the mining officer of the complainant-department itself has written the communication dated 20.04.2013 (Annexure P-2) and the relevant part thereof, reads as under:

"It is requested that today on 20.04.2013, I visited Village Gurugarh Block Machhiwara District Ludhiana regarding complaint of illegal mining conducted in Village Gurugarh Block Machhiwara District Ludhiana. It was verified from the spot that no mining was going on but the Gram Panchayat of the village passing the resolution after getting approved from Block Development Panchayat Officer took the soil from the Shamlat land by digging 4 feet in one Kanal area to fill the same in the village Dharamshala. Copy of the resolution is attached."

Further, even the Block Development Panchayat Officer wrote, vide Annexure P-3, to the effect that the complaint against the petitioners was totally baseless. The relevant part of the official communication dated 26.11.2013, reads as under:

"..... Like this the construction work of the village Dharamshala is being carried out by the Gram Panchayat. The plot of the Dharamshala which is under construction, to fill the same with the soil 4 feet soil was taken out of the land of the Gram Panchayat for digging the soil sand, the Gram Panchayat sent the resolution No.1 dated 21.10.2013 to the office of the undersigned with the request. According to that request, Gram Panchayat has taken the soil/sand and has filled the

same which can be seen. This complaint is the result of party factions of the village. Therefore, the complaint is without facts. There is no truth in it. Gram Panchayat Gurugarh has not committed any illegal mining. Report is submitted.”

Similar are the other numerous official communications available on the record in the form of P-4 to P-11. Having said that this Court feels no hesitation to conclude that the petitioners have been unnecessarily dragged into this unwarranted litigation only because of party faction in the village and without there being any substance in the complaint against the petitioners.

In view of what has been discussed herein above, the question that arises for consideration of this Court is whether the petitioners should be forced to face the criminal trial, even if there is no scope of conviction of the petitioners. The answer to the question posed is and has to be emphatic no. On the basis of such frivolous allegations which are based on totally concocted and absurd story, nobody should be forced to face the criminal trial so as to prevent the abuse of process of Court and also to secure the ends of justice. Valuable time of the Court is not supposed to be wasted on frivolous litigation.

So far as the present case is concerned, even if the allegations levelled against the petitioners in the impugned FIR are taken to be true on their face value, no offence of any kind whatsoever is found to have been made out against the petitioners. This being the cardinal principle of law for quashing the criminal proceedings, the impugned FIR cannot be sustained in view of the

law laid down by the ***Hon'ble Supreme Court in State of Haryana Vs. Bhajan Lal and others, AIR 1992 SC 604*** which has been consistently followed in a long catena of judgments at later points of time as well.

In fact, the present case falls within more than one following broad principles of law laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**, which are as under:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

During the course of hearing, when confronted with the above said fact situation as to how any case is made out against the petitioners, learned counsel for the State had no answer and rightly so, it being a matter of record. It seems that the impugned FIR has been got registered against the petitioners because of either some communication gap or a totally baseless complaint which might be the result of party faction in the village. Under these circumstances, it can be safely concluded that the petitioners can not be forced to face the criminal trial arising out of the impugned FIR, so as to prevent any further abuse of process of Court and also to secure the ends of justice.

No other argument was raised.

Considering the peculiar fact situation of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned FIR against the petitioners has been found to be based on totally absurd allegations which amounts to glaring abuse of process of law, the same cannot be

permitted to proceed any further.

Accordingly, the impugned FIR dated 25.07.2014 under Section 379 IPC and 21 of Mines and Minerals (Development and Resolution Act, 1957) (Annexure P-12) as well as the consequential criminal proceedings arising therefrom, are hereby ordered to be quashed.

Resultantly, with the above said observations made, present petition stands allowed, however, with no order as to costs.

30.10.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**