

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-5739-2011 (O&M)
Date of decision: June 02, 2015

Jagdish Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. D.S. Sobti, Advocate,
Mr. Bikramjit Arora, Advocate &
Mr. Vikas Gupta, Advocate, for the petitioners.
Ms. Rajni Gupta, Addl. Advocate General, Punjab.

Rajan Gupta, J.

This order will dispose of four petitions i.e. CRM-M-5739 of 2011, CRM-M-34082 of 2011, CRM-M-37970 of 2011 & CRM-M-39348 of 2011, seeking quashing of FIR No.33 dated 11.7.2009, registered against the petitioners under sections 420, 467, 468, 471, 120-B IPC and Section 13 (1) (3) and 13 (2) of the Prevention of Corruption Act, 1988, at Police Vigilance Bureau, Amritsar.

Learned counsel for the petitioners submit that FIR in question needs to be quashed. Same was registered on the ground that revenue officials in connivance with Jagdish Kaur had sanctioned mutation No.4489 illegally. However, said order had been upheld by the Commissioner, Jalandhar Division on 1.8.2007. Despite this, FIR was registered in July, 2009. Same cannot be sustained and needs to be

quashed. They also submit that the dispute is of civil nature.

Plea has been opposed by the State counsel. According to him, case was registered by the Vigilance Bureau, Amritsar and after verifying the allegations, sanction for prosecution had also been granted by the competent authority. He has referred to reply by way of affidavit of Dy. Superintendent of Police, Vigilance Bureau, Tarn Taran.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

On 11.7.2009, an FIR was registered by Vigilance Bureau, Tarn Taran on the basis of enquiry conducted by a Dy. Superintendent of Police. It was alleged that Iqbal Singh Patwari, Jagtar Singh Kanungo, Vinay Sharma, Tehsildar in connivance with Jagdish Kaur sanctioned mutation No.4489 regarding inheritance of Tej Kaur wife of Labh Singh. Mutation was sanctioned in favour of Shingara Singh son of Labh Singh ignoring daughter Gurnam Kaur. Mutation No.2233 of village Thatian Mahantan had been entered as per inheritance of Shingara Singh in favour of Jagir Kaur widow of Jagwant Singh, Jagdish Kaur, Satwinder Kaur, Palwinder Kaur, Surinder Kaur daughters of Shingara Singh by Iqbal Singh Patwari on 18.2.2003. Issue was investigated by Jagtar Singh Kanungo on 20.2.2003, but in the record (*Parat*) of Patwari, date of sanction of mutation was recorded as 21.2.2003 and date of entering of Sarkaar mutation was recorded as 2.7.2003. There was a lot of variation in the dates of sanctioning of mutation. Vinay Sharma, Tehsildar had also not recorded the name of Jagir Kaur wife of Shingara Singh in mutation No.2233 of village Thathian Mahantaan. It was found that

Shingara Singh had adopted one Jaideep Singh on 27.5.1996, who was not given his share as per the mutation. It had also been found that mutation Nos.4482 and 4483 had been got sanctioned by Jagdish Kaur in connivance with revenue officials.

Pursuant to aforesaid FIR, investigation ensued. Meanwhile, petitioner Jagdish Kaur preferred a quashing petition before this court and vide order dated 5.8.2011, a coordinate bench (Nawab Singh, J.) directed that proceedings before the trial court qua her would remain stayed. Challan was ultimately presented by the investigating agency on 29.10.2011 after obtaining sanction for prosecuting the public servants. It appears, rest of the accused except Sohan Singh also filed petitions and proceedings qua them were stayed vide order of different dates. Only one accused namely, Sohan Singh continued to face trial. Realizing that trial qua one accused was nearing culmination, this court on 13.5.2015 directed the trial court to adjourn the case beyond the next date fixed before this court. Ultimately, arguments were heard on 20.5.2015 and order was reserved.

It is evident that when order dated 5.8.2011 was passed staying proceedings before the trial court qua accused Jagdish Kaur, the challan was not available before the trial court, thus, no proceedings were actually pending. It appears that the Vigilance Bureau conducted a detailed investigation and submitted its report under section 173 Cr.P.C. thereafter. Relevant para of final report submitted by the investigating agency reads as under:-

“During investigation it has been revealed that in the pedigree table prepared by Iqbal Singh Patwari regarding inheritance of Tej Kaur on the backside of Mutation No.4483 Gurnam daughter of Tej Kaur has not been shown her heir. Despite having knowledge about the said wrongly prepared pedigree table, Sohan Singh Numberdar knowing in connivance with the other accused made a wrong attestation. Malafide intention of the accused is also apparent from the fact that instead of getting the pedigree table attested from the Numberdar of Fatte Chak Jarai, they got it attested from the Numberdar of another village (Bhaini Sidhwan). Thereafter, all the accused in connivance with each other entered and sanctioned the mutation no.4483 of inheritance of Shingara Singh in favour of his heirs Jagir Kaur (widow), Jagwant Singh (son), Jagdish Kaur, Satwant Kaur, Satwinder Kaur, Palwinder Kaur, Palwant Kaur, Narinder Kaur and Santokh Kaur, daughters. Regarding this mutation it is worthwhile to mention that Mutation No.4483 has been entered on the basis of Mutation of inheritance of Shingara Singh No.2233 of village Thathian Mahantaan, but in Mutation No.2233, Jagir Kaur daughter of Shingara Singh has been shown to be dead, death of whom has been found to be in 1995 during investigation. But in mutation No.4483 while sanctioning the mutation, Tehsildar Smt. Vinay Sharma by showing Jagir Kaur to be alive has written in her order that “Jagir Kaur widow is present as identified by Patwari. On the Parat Patwar while sanctioning the mutation, Vinay Sharma, Tehsildar has entered the date to be 21.2.03 and on the parat sarkaar, the date of sanctioning of mutation has been entered as 2.7.03. As such, there appears a gap of about five months in the dates of Parat Patwar and Parat Sarkaar, but as per the rules of the department, Tehsildar writes orders on parat patwar and parat sarkaar on the same date. In this regard, photo copies of the statements of Shri Inderjit Singh Dhanoa, Naib Tehsildar, Chola Sahib and Kuldeep Singh Bath, Naib Tehsildar, Tarn Taran alongwith copies parat patwar and parat are attached with the

challan.

As such, from the investigation of the FIR it has been found that at the time of inquiring into the Mutation No.4482 of Mutation of Tej Kaur by Jagtar Singh Kanungo, entries made by Iqbal Singh Patwari were not probed into and nor the attached documents were perused. Whereas the Kanungo has to observe all the entries made by the Patwari as per line 7.4 of para No.(2) of the Land Record Manual and documents attached in the file and copy file are to be inquired into. As per Line No.7.4 of Para No.(3), Tehsildar is supposed to pass/write its order after comparing entries in the file and copy of the file (Photo copy of the Relevant Manual is attached with the challan). In order to benefit Jagdish Kaur, Smt. Vinay Sharma, Tehsildar has sanctioned the mutation regarding inheritance of Shingara Singh that was entered by above said Patwari, Kanungo and Tehsildar, without comparing the pedigree table on the backside of the Mutation, Sajra Nasab and affidavit attached on the file. On the parat patwar of this Mutation, date of sanctioning of mutation as 21.2.13 and on the parat sarkaar the date of sanctioning of mutation as 2.7.03 has been put by Tehsildar Vinay Sharma. Whereas as per the rules of the department, orders are made on parat patwar and parat sarkaar on the same date. While sanctioning the mutation, it has also been found to be sanctioned by Vinay Sharma, Tehsildar on 2.7.03 on the name of Jagir Kaur wife of Shingara Singh (who had died in the year 1994) by showing her alive. Iqbal Singh Patwari and Jagtar Singh Kanungo have admitted this fact during investigation of the present FIR above said Jagdish Kaur daughter of Shingara Singh had close proximity with Shri Vinay Sharma, Tehsildar and for extending benefit to Jagdish Kaur, under the influence of Vinay Sharma, Tehsildar, they (Iqbal Singh Patwari and Jagtar Singh Kanungo) entered Mutation No.4482.”

It is apparent that investigating agency annexed a list of

witnesses to support the prosecution case. Only plea raised before this court is that mutation in question was upheld by the Commissioner, Jalandhar Division vide order dated 1.8.2007, thus, instant FIR could not have been registered. I am not convinced with this plea. Mere fact that mutation in question has been upheld by a revenue authority, would not be a bar for investigating agency to conduct investigation and arrive at its own conclusion. It is evident that in the instant case, investigating agency found that certain revenue officials had acted in connivance with accused Jagdish Kaur. As the proceedings qua the petitioners remained stayed before the trial court, there was no opportunity to analyze the evidence available with agency qua the petitioners. Needless to say, it is not possible for this court to sift the evidence available in its inherent jurisdiction. Plea that dispute is basically civil in nature, is devoid of merit. This court would be reluctant to quash the FIR as well as resultant investigation in its inherent jurisdiction. It would be difficult to come to any conclusion without appreciating the evidence collected by the investigating agency (see *T. Vengama Naidu vs. T. Dora Swamy Naidu & Ors.*, 2007 (2) R.C.R. (Criminal) 494). On perusal of the FIR and report under section 173 Cr.P.C., this court is not convinced that no offence, as alleged, is made out. Proceedings cannot be said to be frivolous or vexatious, particularly when there is allegation against revenue officials of having connived with the private individual(s) and provisions of Prevention of Corruption Act, 1988 having been invoked by the agency. In judgment reported as ***C.P. Subhash Vs. Inspector of Police Chennai and Ors.***, 2013 (4) RCR (Criminal) 535, the apex court held as follows:-

“13. In the light of the above, the High Court was wrong in quashing the FIR on the ground that the allegations did not constitute an offence even when the same were taken to be true in their entirety. It was also, in our view, wrong for the High Court to hold that the Respondents were not the makers of the documents or that the filing of a civil suit based on the same would not constitute an offence. Whether or not the Respondents had forged the documents and if so what offence was committed by the Respondents was a matter for investigation which could not be prejudged or quashed by the High Court in exercise of its powers under Section 482 of Code of Criminal Procedure or under Article 226 of the Constitution of India.”

In other judgment reported as *State of A.P. Vs. Gourishetty Mahesh and others, 2011 (6) R.C.R. (Criminal) 2546*, it has been held whether prima facie case is made out or not, can be seen at the time of framing of charge and not in inherent jurisdiction of this court under section 482 Cr.P.C., unless there are exceptional circumstances.

I am, thus, of the considered view that there is no merit in these petitions. Same are hereby dismissed. Trial court is directed to proceed further with the trial qua the petitioners. In the eventuality trial has continued against a co-accused meanwhile, same shall be deferred till the conclusion of proceedings qua the present petitioners. In view of the fact that matter has been lingering on since the year 2011, efforts shall be made to conclude the trial expeditiously, preferably within a period of one year.

June 02, 2015
'Rajpal'

(RAJAN GUPTA)
JUDGE

Whether to be referred to reporter? Yes / No