

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-39562-2014
Date of decision:16.7.2015**

Thakdar Dass

...Petitioner

Versus

Chiman Lal and others

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Kulbhushan Raheja, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 15.7.2014 (Annexure P-3) passed by the learned Additional Sessions Judge, Fazilka, upholding the order dated 16.3.2013 passed by the learned Sub-Divisional Judicial Magistrate ('SDJM' for short), Abohar, whereby complaint of the petitioner under Sections 430, 452, 34 and 120-B of the Indian Penal Code ('IPC') was dismissed, petitioner has approached this Court by way of present petition under Section 482 Cr.P.C., for setting aside the impugned orders.

Briefly put, necessary facts of the case, as noticed by the learned SDJM, Abohar, in para 1 of his impugned order, are that complainant Thakur Dass alleged that he owns agricultural land in village Diwan Khera comprised in Rect. No.21 Killa No.2 (8-0)3(8-0)7(8-0)8(8-0)9(8-0)12(8-0)13(8-0)14(7=18)19(8-0) and there was an orchard in land comprised in Rect. No.21 M killa No.2,3,7,8,9,12,13,14,18 &19. The canal department sanctioned turn of water to irrigate agricultural and orchard

which was at S.No.3/5 and was upto 3/4 E Order 68 of Canal Act dated 8/9-11-2004. Accused No.1 owns agriculture land adjoining and his turn of water was prior to that of complainant. There was a water course through which accused No.1 irrigated land which was at one Shakh No.1 shown as ABC in site plan and through another water course as shown as ADE in the site plan attached with complaint complainant irrigated his land. The canal/distributory namely Panjawa at Mogha No.68017/L was closed for 15 days w.e.f., 14.4.2006 to 24.4.2006. It was further alleged that orchard of the complainant was being damaged due to close of canal so the complainant was irrigating his orchard through his two tubewells installed therein and as shown at mark (big dots) in the site plan in Killa No.14, 17 of Rect. No.21. It was alleged that on 8.5.2006 at about 6:00 PM in the evening accused No.1,2 & 3 trespassed into the agriculture land of the complainant without permission and came to water course at mark ADE in order to commit mischief and to interrupt water supply to the complainant and in order to cause damage to the water supply for agriculture purpose stopped the tubewells of the complainant and brought water into the water course thus causing damage loss and injury to the orchard and agriculture land owned by the complainant. Even the water course was closed by the accused No.1,2 & 3 illegally and dishonestly in furtherance of common object and intention to commit mischief and took wari of water to their fields whereas water to the fields of complainant could not be swayed away or stopped or interrupted. The accused also hatched a criminal conspiracy in that regard also. It was alleged that an application was submitted to the Deputy Collector, Abohar Canal Division, Canal Colony, Abohar on 2.6.2006 for taking action but he did not take action for the reasons best

known to him in spite of the fact before reporting and finding loss and damage and injury caused to the complainant due to mischief etc., by the accused a concrete inquiry was held by him through his subordinates Halqa Patwari and Zileadar etc. The incident was witnessed by Ramesh Lal, Chiman Lal, Kalu Ram and even when the complainant asked question to the accused they admitted having committed mischief etc., even threatened him with dire consequences.

Petitioner-complainant produced his preliminary evidence. However, after going through the evidence brought on record by the complainant-petitioner and hearing the arguments of learned counsel, the learned SDJM, Abohar, did not find prima facie case or sufficient grounds to summon the accused-respondents. Accordingly, the complaint was dismissed vide impugned order dated 16.3.2013 (Annexure P-1). Dissatisfied, petitioner-complainant filed his revision petition, which also came to be dismissed by the learned Additional Sessions Judge, Fazilka vide impugned order dated 15.7.2014 (Annexure P-3).

Hence this petition, at the hands of the complainant, who seeks to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C., for setting aside the above-said impugned orders.

Learned counsel for the petitioner submits that both the learned courts below have proceeded on a misconceived approach, while passing the impugned orders. He further submits that the complainant-petitioner brought on record cogent evidence, which was sufficient to summon the accused-respondents to face a criminal trial. He submits that by the unwarranted action of the accused-respondents, financial loss was caused to the petitioner as his orchard could not get sufficient water in time. In

support of his contentions, learned counsel for the petitioner places reliance on an order dated 20.7.2006 (Annexure P-4) passed by the Deputy Collector, Abohar Division. He prays for setting aside the impugned orders, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the instant case, present one has been found to be a frivolous litigation and the same is liable to be dismissed with costs, for the following more than one reasons.

From bare perusal of the facts of the case, referred to hereinabove, it becomes crystal clear that it was the petitioner himself who indulged in an illegal action, while misusing the drain meant for canal water and maintained by the Irrigation Department of the State, by putting the water of his private tubewell in the said drain, thereby causing prejudice to the turn of water of the accused-respondents, for which the accused were entitled in law to use the canal water as per their fixed turn of water. However, trying to play smart, petitioner, instead of mending his ways, launched the present frivolous litigation against the respondents.

During the course of hearing, when a pointed question was put by this Court to the learned counsel for the petitioner as to how he justify the above-said illegal action of the petitioner on the basis of order dated 20.7.2006 (Annexure P-4) passed by the Deputy Collector, Abohar Division, he had no answer and rightly so, it being a matter of record. In fact, not only the order dated 20.7.2006 (Annexure P-4) but the facts of the case, as alleged even by the complainant himself, clearly go against him and

that fact itself was sufficient to smash his entire case. No illegality or perversity, of any kind of whatsoever, could be pointed out by the learned counsel for the petitioner in either of the impugned orders, passed by the learned courts below. Having said that, this Court feels no hesitation to conclude that the learned SDJM as well as the learned Additional Sessions Judge, committed no error of law, while passing their respective impugned orders and the same deserve to be upheld.

The allegations levelled by the petitioner had already been examined and considered thrice and were found totally baseless every time. Initially, petitioner approached the police authorities but the petitioner failed to substantiate any of the allegations levelled by him. Thereafter, petitioner filed his complaint but the learned SDJM could not find even a prima facie case against the accused-respondents, for the purpose of summoning and the complaint of the petitioner was dismissed. As the petitioner was bent upon to cause maximum harassment to the respondents, he filed his revision petition which was also rightly dismissed by the learned Additional Sessions Judge.

Since the petitioner was adamant in pursuing this frivolous litigation still further, he approached this Court by way of instant petition, invoking inherent jurisdiction of this Court under Section 482 Cr.P.C. Thus, the above-said chain of events makes it clear that petitioner has repeatedly tried to misuse the process of law, for the purpose of wreaking his vengeance. Such glaring misuse of process of law deserves to be curbed with an iron hand, by dismissing such a frivolous litigation by imposing suitable costs.

The above-said view taken by this Court also finds support

from the judgment of this Court in **Balwinder Singh v. M/s Karnal Motors and another, 2014 (4) RCR (Civil) 678**, wherein this Court followed the law laid down by the Hon'ble Supreme Court as well as Division Bench of this Court, on the issue of dismissing the frivolous litigation by imposition of costs, as deterrent punishment to the unscrupulous litigants. The relevant observations made in paras 16 to 18 in **Balwinder Singh'** case (supra), which can be gainfully followed in the present case, read as under:-

*At this stage, this Court may also refer to the observations of the Hon'ble Supreme Court in the case of **State of Uttaranchal v. Balwant Singh Chaufal and others, 2010(1) RCR (Civil) 842** has held that the Court should ensure that the frivolous petitions must be discouraged by imposing exemplary costs or by adopting novel methods to curb such petitions. It may be noticed that appellant has put up a false plea with regard to territorial jurisdiction at civil court at Rajpura and thus, in view of the judgment of Hon'ble the Supreme Court in case of **Dalip Singh v. State of Uttar Pradesh and others, (2010) 2 Supreme Court Cases 114** such a petition should be dismissed. Hon'ble the Supreme Court in the case of **Prestige Lights Ltd. v. SBI, 2007(4) R.C.R.(Civil) 46 : 2007(4) Recent Apex Judgments (R.A.J.) 642 : (2007)8 Supreme Court Cases 449**, observes that if the litigant is guilty of suppressing the facts of not disclosing the facts such a petition be dismissed without adjudicating the appeal.*

*It is also appropriate to refer to the observations of Hon'ble the Supreme Court made in **Salem Advocate Bar Association v. Union of India, 2005(3) R.C.R. (Civil) 530**, which reads as follows :-*

"Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35 (2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons therefor. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules,