

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-523 of 2015 (O&M)
Date of Decision: 4.12.2015**

Inderpal Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Vikas Bahl, Sr. Advocate with
Mr. Manbir Singh, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Additional A.G. Punjab.

Mr. K.S. Dadwal, Advocate
for respondent No.5.

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

RAMESHWAR SINGH MALIK J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned FIR No. 69 dated 3.12.2014 under Sections 447/511/427 of the Indian Penal Code ('IPC' for short) registered at Police Station Garhdiwal, District Hoshiarpur and consequential criminal proceedings arising therefrom.

Notice of motion was issued and pursuant thereto, reply was filed on behalf of the official respondents. A separate reply was filed on behalf of respondent No.5

Learned senior counsel for the petitioner submits that apprehending mischief by the complainant, petitioner filed civil suit for declaration and permanent injunction qua land in dispute, vide Annexure P-2. Petitioner also moved an application under Order 39 Rule 1 and 2 read with Section 151 CPC seeking interim injunction and the said application came to be allowed by the learned court of competent jurisdiction, vide order dated 5.5.2014 (Annexure P-3). Petitioner also filed a complaint against the defendants of the abovesaid civil suit, vide Annexure P-4. Petitioner had to move a complaint before the police authorities vide Annexure P-7, but no action thereon was taken and the petitioner approached the learned court of competent jurisdiction by moving an application under Section 156 (3) Cr.P.C., vide Annexure P-8.

He further submits that despite being fully aware about the abovesaid material facts, complainant-respondent No.5 concealed these facts and get the impugned FIR registered. He refers to the reply filed by respondent No.5, to contend that she was silent in her reply, as to in which capacity she was claiming that she was managing the land, when the petitioner was found in cultivating possession thereof. Even the investigating agency also could not collect any power of attorney in favour of respondent No.5-complainant, allegedly suffered by Gurdial Singh in her favour. He would next contend that lease in favour of the petitioner was denied. Once the cultivating possession of the petitioner was duly established on record, there was no scope of committing any offence by the petitioner, including the offences alleged against him. He

concluded by submitting that at the most, if at all, it was a case of civil nature for which civil suit is pending between the parties.

In support of his contentions, he places reliance on the following judgments:-

1. State of Orrisa Vs. Debendra Nath Padhi, 2005 (1) RCR (criminal) 297 (SC)
2. State (Delhi Administration) Vs. Mahinder Singh, 2007 (5) RCR (criminal) 715 (Delhi High Court)
3. Sushil Ansal Vs. State of Haryana 1992 (1) RCR (criminal) 479 (P&H)
4. Narain Singh Vs. State of Haryana, 1997 (3) Crimes 47 (P&H)
5. Lakhwinder Singh Vs. State of Punjab, 2000 (4) RCR (criminal) 104 (P&H)
6. Gian Chand Vs. State of Punjab, 2003 (2) RCR (criminal) 384 (P&H)
7. Ravinder Singh @ Ruby VS. State of Punjab and another (CRM-M-25825 of 2004 decided on 17.10.2007) (P&H)
8. Rakesh Kumar and others Vs. State of Punjab and others, 2009 (2) RCR (criminal) 565
9. Sadhu Singh and others Vs. State of Punjab and another, 2011 (3) RCR (criminal) 263 (P&H)
10. Atma Singh and others Vs. Balwinder Kaur, 2011 (2) RCR (criminal) 227 (P&H)

He prays for quashing the impugned FIR alongwith consequential proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for respondent No.5-complainant submit that since allegations against the petitioner are direct and serious, he is not

entitled for invoking the inherent jurisdiction of this Court, by filing the present petition under Section 482 Cr.P.C. They further submit that once challan has been presented against the petitioner and charge has also been framed by the learned trial court, criminal proceedings arising out of the impugned FIR are not liable to be quashed. They pray for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the 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. To say so, reasons are more than one, which are being recorded hereinafter.

The injunction order dated 5.5.2014 (Annexure P-3) passed by the learned court of competent jurisdiction, allowing the application of the petitioner under Order 39 Rule 1 and 2 read with Section 151 CPC, in a civil suit for declaration and permanent injunction, was a matter of record which clearly shows that it was not the complainant but the petitioner who was in cultivating possession over the land in question. Having said that, this Court feels no hesitation to conclude that there was no occasion for the petitioner to commit the offence alleged against him. It has been found to be a clear case of abuse of process of court, at the hands of the complainant because of which the criminal proceedings arising out of

the impugned FIR cannot be sustained.

Further, the complainant does not claim ownership over the land in question, but claims that she was managing this land. On a pointed question having been put to the learned counsel for the complainant-respondent No.5, to show any power of attorney in favour of the complainant from the owner of the land, requesting her to manage it, he had nothing to show and rightly so, it being a matter of record. No such power of attorney forms part of the report under Section 173 (2) Cr.P.C. In fact, reply of the State as well as respondent No.5 are also conveniently silent in this regard. In such a situation, it can be safely concluded that the complainant had no locus standi qua the land in question and the impugned FIR as well as subsequent criminal proceedings arising therefrom cannot be sustained, for this reason also.

A bare reading of the injunction order passed by the learned civil court would show that as per the agreement dated 17.8.2009, plaintiff-present petitioner, was in cultivating possession over the land in question, as a lessee. This fact recorded by the learned civil court at page 29 of the paper book has also gone undisputed on record. Once the petitioner was in actual physical cultivating possession over the land in question, there was no occasion for him to commit the offence alleged against him. The basic ingredients of criminal trespass, as defined under Section 441 IPC, are conspicuously missing in the present case. Similarly, the impugned FIR does not disclose the commission of any offence against the petitioner including under Section 447/511/427 IPC.

On the other hand, the complainant has been found trying to misuse the process of court which cannot be permitted. Thus, it is unhesitatingly held that even after treating the allegations levelled against the petitioner in the impugned FIR to be true on their face value, without adding anything thereto or without subtracting anything therefrom, no offence whatsoever is made out against the petitioner. Thus, the petitioner cannot be forced to face criminal trial without there being any fault on his part and the impugned FIR is liable to be quashed, for this reason as well.

The abovesaid view taken by this Court also finds support from the judgments relied upon by learned senior counsel for the petitioner.

The definition of criminal trespass has been provided under Section 441 IPC, which reads as under:-

"Criminal trespass.- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby or intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

A bare reading of the abovesaid definition of criminal trespass would show that it pre-supposes the possession of the complainant over the land in question, which has not been found in

the present case. Once the basic ingredients of the offences under Sections 447/511/420 IPC, as alleged against the petitioner, are not fulfilled, the impugned FIR cannot be sustained. In this view of the matter, it is held that the complainant has misused the process of law.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be accepted. Consequently, FIR No. 69 dated 3.12.2014 under Sections 447/511/427 IPC registered at Police Station Garhdiwal, District Hoshiarpur and consequential criminal proceedings arising therefrom are ordered to be quashed, with a view to prevent any further abuse of process of court and also to secure the ends of justice, however, only qua the petitioner.

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

(RAMESHWAR SINGH MALIK)
JUDGE

4.12.2015
Ak Sharma