

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

**1. CRM No.M-9987 of 2014 (O&M)
Date of Decision: January 09, 2015**

Kesar Singh Petitioner

vs.

State of Punjab Respondent

**2. CRM No.M-9988 of 2014 (O&M)
Date of Decision: January 09, 2015**

Charanjit Singh Petitioner

vs.

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashok Sharma Nabhewala, Advocate
for the petitioner.

Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

By this order, I will dispose of two criminal petitions bearing CRM Nos.9987 and 9988 of 2014 for quashing of the FIR No.104, dated 20.08.2008, under Sections 431, 427 of the Indian Penal Code, 1860 (in short 'IPC'), registered at Police Station Lohian, District Jalandhar.

The Case was registered on the complaint of Manjit Singh, Assistant Engineer, Bist Doad, Sub Division Jalandhar, dated

20.08.2008 (Annexure P-1). In the said complaint, it was stated that on 20.08.2008, when he along with Beldar Kewal Singh was going from Puli (small bridge) at village Mandala Channa on the left side for inspection due to rainy season at Burji No.7000 near Pucca road, which is constructed on both sides of the Bann, it was found that Kesar Singh son of Lehna Singh and Charanjit Singh son of Sadhu Singh, resident of village Sarai Jattan, P.S. Sultanpur Lodhi after making a hole in the Bann, are irrigating their fields. They have not obtained any permission from the department. By making a hole in the Bann, they had weakened the Bann and caused loss. On the basis of the complaint, the case under Section 427 and 431 IPC was registered .

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has argued that a rivulet (Bein) comes from Jalandhar side and after passing through various villages, ultimately merges into river Satluj. Somewhere in 1980, a dam 50 ft. wide was constructed on the rivulet (bein) after acquiring the land of the villagers. The villagers were irrigating their land across the dam by the pipes laid beneath. The case has been registered without any verification. It is stated that the petitioners are living in a different village. It has been further argued at the most that the offence under Section 70 of the Northern Canal Drainage Act, 1873 (in short 'the Canal Act') is made out. Therefore, prayer has been made for quashing of the FIR in question.

After considering the facts and circumstances, I am of the view that the FIR was lodged by a public servant in discharge of his official duty. He found that the petitioners had made a hole in the Bann and were irrigating their fields. The petitioners otherwise had no right to make a hole in the Bann.

Learned counsel for the petitioner has argued that when there is special law and provisions of Indian Penal Code, 1973 (in short 'IPC') that could not be invoked to register the present FIR. At the most the FIR could be registered under the Canal Act.

I do not agree with the contention of the learned counsel for the petitioner that the provisions of the Cr.P.C. could not be invoked in the present case. Section 220 sub Section 3 reads under:

"If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, of such offences."

The hole in the bandh will weaken it and one day it may cause havoc. Prima facie, there is no misuse of the process of the law/court. The case was registered in discharge of the official duty. It comes out that previously Kesar Singh and Charanjit Singh had filed CRM Nos.34556 and 38906 of 2011 (Annexure P-4) for quashing of the present FIR. Vide order dated 02.07.2013, both the petitions were dismissed with certain observations. The SLP filed before Hon'ble the Supreme Court was dismissed vide Annexure P-5.

It being so, I do not find any ground to quash the FIR in question.

A perusal of the order dated 05.03.2014 (Annexure P-7) passed by learned Sub Divisional Judicial Magistrate, Nakodar shows that the charges have already been framed against the present petitioners. It shall be open to the petitioners to raise all the available pleas during trial, which shall be considered at the time of final disposal of the case.

Accordingly, both the petitions stand dismissed.

January 09, 2015
sarita

(KULDIP SINGH)
JUDGE