

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

**Criminal Misc. No. M-15269 of 2016
Date of Decision:-30.08.2016**

Jaspal Singh

...Petitioner

Versus

Jasvir Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sukhjot Singh, Advocate
for the petitioner.

HARI PAL VERMA J.

The petitioner has filed the present petition under Section 482 Cr.P.C. seeking setting aside the order dated 2.9.2015 (Annexure P-4) passed by learned Additional Sessions Judge, S.B.S. Nagar, whereby order dated 4.8.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, S.B.S. Nagar summoning the respondent-accused to face trial under Sections 323, 506, 447, 148 and 149 IPC has been set aside.

Briefly stated the petitioner has filed a criminal Complaint No.050019A/1 dated 4.2.2012 titled 'Jaspal Singh vs. Jasvir Singh and others', under Sections 323, 504, 452, 427, 34 & 392 IPC to the effect that on 2.2.2012 when the petitioner-complainant and his wife were present over the land in their possession, the accused persons armed with deadly weapons came there and started abusing them, whereas respondent No.1

raises lalkara that they would teach the complainant a lesson for filing case against them and will dispossess him from the land. The other co-accused forcibly and illegally trespassed and entered the field of the petitioner-complainant and started cutting the 'Jabi' crop. However, when the petitioner-complainant tried to stop them, they started pushing and abusing him. As the accused were more in numbers and armed with deadly weapons, the petitioner was unable to stop them. While leaving the fields, respondents-accused used filthy language and called him with bad names. They also criminally intimidated the petitioner.

On the basis of preliminary evidence, the learned Magistrate ordered summoning of the respondents-accused to face trial under Sections 323, 506, 447, 148 and 149 IPC vide order dated 4.8.2014 (Annexure P-2).

The respondents-accused have challenged the summoning order dated 4.8.2016. However, the learned Additional Sessions Judge vide judgment dated 2.9.2015 has allowed the revision petition and the summoning order dated 4.8.2014 passed by the learned Magistrate was set aside.

The petitioner-complainant has filed the present petition impugning the order dated 2.9.2015 passed by learned Additional Sessions Judge setting aside the order dated 4.8.2014 passed by learned Magistrate.

Learned counsel for the petitioner has argued that the revisionary Court has not appreciated the fact that the petitioner and respondents are relatives and are co-sharers. They are in possession of their respective share in the property. The possession of the petitioner has been

protected by the High Court vide order dated 3.8.2012 (Annexure P-5). The ingredients of Sections 441 and 447 IPC are attracted in the case as the respondents have committed criminal trespass to the property of the petitioner. The petitioner and the respondents-accused though are co-sharer but they are in possession of their respective shares in the property. Similarly, the finding recorded by the learned revisionary Court that no offence under Section 323 IPC is made out against the respondents-accused, because no medical record is produced, is also wrong. In order to invoke Section 323 IPC, medical record of the injured is not necessary. It has been specifically alleged that the respondents-accused wrongly trespassed into the property and criminally intimidated the petitioner and have also cut the Jabi crop from the fields exclusively owned by the petitioner, therefore, the offence under Section 506 IPC is apparently attracted.

I have heard learned counsel for the petitioner.

The petitioner Jaspal Singh is a real son of respondent No.2-Charan Kaur and real brother of respondent No.1-Jasvir Singh. Respondent No.3 is wife and respondent No.4 is son of respondent No.1. Virtually, it is a dispute regarding the share in the property of Bachan Singh, father of petitioner-complainant and husband of respondent No.2-Charan Kaur. While the petitioner-complainant came into the exclusive possession of his share in the property, a civil litigation is pending between the parties. There is no partition of the land in dispute. Therefore, in the absence of such specific partition, the complainant has not established the exclusive possession of his share in the property. All the co-owners have equal right

and co-ordinate interest in the property, unless it is partitioned. Similarly, for the summoning of respondents-accused under Sections 323 and 506 IPC, the petitioner has not been able to substantiate any allegation. No injury on the person of petitioner has been proved, as no medical evidence with regard to the injuries has been adduced. The petitioner has also failed to establish that any bad words were uttered by the respondents-accused to him or his wife. In the absence of any physical injury or harm sustained by the petitioner, no offence under Section 323 IPC is made out against the respondents. Similarly, no offence under Section 506 IPC has been made out as empty threats or abuse does not amounts as an offence of criminal intimidation, more particularly in the background of the case when parties are in close relations i.e. son and mother and civil proceedings are pending between them.

Therefore, in view of the facts that the petitioner has failed to make out a case as referred in the complaint, the order passed by learned Additional Sessions Judge dated 2.9.2015 (Annexure P-4) does not warrant any interference.

The present petition is dismissed.

August 30, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No