

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

**CRM-M No.22336 of 2012 (O&M)
Date of Decision : 20.05.2016**

Satbir Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present : Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1-State.

Mr. Vijay Pal, Advocate
for respondent No.2.

FATEH DEEP SINGH, J.

The brief facts in this petition under Section 482 Cr.P.C. seeking quashment of the criminal proceedings are as under :-

A criminal case by way of FIR No.93 dated 25th April, 2012 under Section 379 IPC was registered at Police Station Narwana Sadar District Jind on the complaint of respondent No.2-Vinod Kumar. The brief allegations contained in the FIR (Annexure P1) are to the effect that the complainant claims that he has 2 acres of land in village Danoda out of which he has got 4 kanals and 4 marlas of land on the basis of orders dated

9th May, 2009 passed by the Court of learned Civil Judge, Narwana in Civil Suit No.17 from Satbir Singh and Mahabir Singh sons of Rulia Ram. The complainant claims that he has been cultivating this land for the last 02 years but sons of Satbir Singh and Mahabir Singh namely Naresh Kumar and Chhabila have illegally reaped his standing wheat crop from half acre of this land on 23rd April, 2012 and wheat weighing approximately 12 quintals. The petitioner-Satbir Singh, one of the accused, has preferred the instant petition under Section 482 Cr.P.C. for quashing the impugned FIR and subsequent proceedings thereon.

The grounds that have been spelled out are that grandfather of the complainant-Vinod Kumar namely Moonga Ram had transferred certain ancestral property in favour of Chander Bhan as well as sons of Madan Lal and no share was given to the complainant and his brother who were also LR's of Kali Ram regarding which a civil suit was filed by them against Chander Bhan which was decreed in their favour through judgment and decree dated 23rd April, 2001. It is during the course of civil suit, 16 Kanals of land bearing Khewat/Khata No.791/1025 based on Jamabandi pertaining to the year 1992-93 was transferred by Chander Bhan in favour of the petitioner-Satbir Singh and his brother-Mahabir Singh, who happen to be the present accused, through registered sale deed dated 7th January, 1997. It is claimed that complainant/respondent No.2 similarly challenged this transfer through a civil suit claiming that Chander Bhan had transferred 4 Kanals 4 Marlas more than his share in the said land and which suit too

stood decreed through judgment and decree dated 9th May, 2009 (Annexure P-2). It is after 3 years of passing this judgment and decree (Annexure P-2), the decree-holder sought possession of the land in question on the basis of execution application (Annexure P-3) and which as per the order (Annexure P-4) was still pending. Thus, it is claimed that since admittedly as per the own stand of the then plaintiff now complainant, they are not in possession of this piece of land, their claim of having sown crop thereon and its forcible reaping by the accused was thus unfounded and hence the relief in question.

Heard Mr. Rakesh Nehra, Advocate for the petitioner, Mr. Munish Sharma, Asstt. Advocate General, Haryana for respondent No.1-State and Mr. Vijay Pal, Advocate for respondent No.2 and perused the entire records of the case.

In the light of this admitted stand it leaves no scope of doubt by virtue of judgment and decree (Annexure P-2) that the civil suit of the complainant-Vinod Kumar, the then plaintiff has been decreed against Satbir Singh, Mahabir Singh-accused as well as Chander Bhan whereby, the sale deed bearing No.1475 dated 09.07.1997 was set aside *qua* 4 Kanals and 4 Marlas in favour of the accused side holding that the plaintiff now complainant-Vinod was entitled to get the possession of the land. The same is admitted to have attained finality.

Learned State Counsel could not impress upon this Court how the land has come in the possession of the complainant, by virtue of which

as per the claim of the complainant, he has sown crop therein and which is the subject matter of the theft before the Criminal Court. During the course of arguments the very execution application under Order 21 Rule 35 C.P.C. moved by the complainant (Annexure P-3) shows that the complainant is seeking possession of the suit land subject matter of decree and which was pending, in the light of the stands of the two sides at the time of the arguments and till then if that is so, the possession in the absence of any substantial and cogent evidence documentary in nature led by the complainant that he happens to be in possession of this land certainly puts his case under a cloud. The initial sale in favour of the accused side though may be an outcome of malice to deny the present complainant of his legitimate right to property but can such a recourse allowed to be adopted by the complainant to clothe such a dispute with an element of criminality?

Certainly to the mind of this Court, it is clear and clear abuse of the process of the Court when a party claims that he is a genuine and *bona fide* purchaser with possession of the property on the basis of a registered sale deed and the admitted stand of the complainant in the execution that possession is with the accused side and he be delivered that possession and till then until and unless he is delivered the possession he cannot claim that he was in cultivating possession of the land. The averments made in the complaint which form the subject matter of the FIR that complainant-Vinod is in possession for the last 02 years with effect from 23rd April, 2012, the date of the occurrence to be in possession are certainly unsubstantiated.

What one can perceive is that as a pressure tactics, the complainant in this criminal case is trying to overcome the other side by this misuse of the process of the Court. Reliance has sought to be placed on “***Devendra Vs. State of Uttar Pradesh***” 2010(4) R.C.R.(Criminal) 448, where the Hon'ble Apex Court has laid down the proposition that High Court would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. Thus, from this all it flows that the allegations made in the FIR and the own stand of the complainant before the Civil Court where he has filed the execution proceedings for satisfaction of the decree passed in his favour do not satisfy the ingredients of an offence and rather is a pure and pure misuse of process by way of harassment in a Criminal Court. There could certainly be civil wrong on the part of the accused/petitioner in denying the legitimate right of the decree-holder but that does not in any manner constitute a criminal wrong.

Appreciating the submissions, the Hon'ble Supreme Court in the case of ‘***State of Haryana and others v. Ch.Bhajan Lal and others***’ 1992 AIR SC 604, has considered at length the exercise of powers under Section 482 Cr.P.C. and has enunciated the principles though not exhaustive but are highly illustrative and the same are to be exercised either to prevent abuse of the process of any Court or to secure the ends of justice and which are incorporated as follows:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Thus, in the totality of what has been canvassed before this Court the allegations leading to criminal prosecution are totally absurd and without impact of the present observations on the execution as well as the civil dispute between the parties an eventuality has arisen in view of the ratio laid down in *Bhajan Lal's case (ibid)*, this Court needs to show indulgence. In view of the same, the criminal prosecution is certainly unwarranted and in the light of which, the present petition stands allowed and the FIR (Annexure P-1) along with all subsequent proceedings hereby stand quashed *qua* the petitioner.

Records of the trial Court be sent back.

May 20, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE