

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

CRM-M No.27173 of 2010
Date of decision: 12th May, 2016

Madhu Chaudhary and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Salil Bali, Advocate
for the petitioners.

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

Mr. Dinesh Arora, Advocate
for LRs of respondent No.2.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. whereby the petitioners Madhu Chaudhary, Singaro and Anaro who are accused in case bearing FIR No.558 dated 29.10.2009 under Sections 420/467/468/471 IPC pertaining to Police Station Civil Lines, Rohtak (Annexure P6), have sought quashment of the FIR, report under Section 173 Cr.P.C. and all consequences arising thereof.

After hearing arguments of the respective counsel representing the parties before this Court and on perusal of the records of the case. The facts that are necessitated to be recapitulated are that

petitioner No.1 Madhu Chaudhary claims that she was owner and in possession of a plot bearing No.2 measuring 453 1/3 square yards situated in Killa No.392/1/3/31 in the revenue area of village Moja Bohar, Ram Gopal Colony, Rohtak. It is the stand of the petitioners that Smt. Shanti Chaudhary, mother of Madhu Chaudhary petitioner was holding General Power of Attorney of Gopal Krishan and Ram Gopal sons of Ram Nath who happened to be owners and in possession of 559 Share of the agricultural land comprised in Khewat No.94/79 Khatoni No.125/126/127 Kitta 14 in all land measuring 55 Kanals 17 Marlas and 1050 share of Khewat No.95/80-81-82 Khatoni No.129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140 Kitta 26 land measuring 105 Kanals situated in the revenue estate of village Bahu Jamalpur, Tehsil and District Rohtak.

It is during the course of events Gopal Krishan and Ram Gopal above said through their Attorney Smt.Shanti Chaudhary filed a suit for declaration that the properties so owned by them have been exchanged and they have become owners in possession of the above said plot No.2 measuring 453 1/3 square yards which was owned by petitioner No.1 and thus, petitioner Madhu Chaudhary has become owner of the agricultural land measuring 55 Kanals 17 Marlas and land measuring 105 Kanals situated in the revenue estate of village Bahu

Jamalpur, Tehsil and District Rohtak. Copy of the plaint has been filed as (Annexure P1).

It is claim of the petitioner Madhu Chaudhary that she was defendant in the said suit and had appeared and admitted claim of the plaintiffs Ram Gopal and Gopal Krishan leading to passing of a judgment and decree of declaration (Annexure P2). It is admitted by Madhu Chaudhary that petitioners No.2 and 3 had some share in this chunk of land which is also reflected in the jamabandi (Annexure P3) pertaining to the year 2001-02. The assertion of petitioner Madhu Chaudhary is that because of her job she could not look after the agricultural land and thus, has sold off her share of this land, which she got by virtue of Civil Court judgment and decree, to various persons through different sale deeds which is reflected in the revenue document (Annexure P4) and out of the total holdings of 52 Kanals 10 Marlas she claims to have sold 52 Kanals 3 Marlas by virtue of these sale deeds and thus, 7 Marlas of land still remains to her share and which land she sold to petitioners No.2 and 3 vide sale deed No.1330 dated 18.05.2009 (Annexure P5). It is against this alienation by petitioner Madhu Chaudhary, respondent No.2 Balwan Singh (now represented by his heirs) lodged the FIR in question (Annexure P6/P6-T) against the petitioners alleging that petitioner No.1 has sold illegally and knowingly this share belonging to the complainant, to petitioners No.2 and 3

fraudulently and thus, the allegations hover over this conduct of the petitioners.

It needs to be highlighted here that complainant Balwan Singh prior thereto has also filed a civil suit for permanent injunction as well as mandatory injunction against petitioners No.2 and 3 (Annexure P7) alleging that the original owner Bihari (since deceased) had executed a registered lease deed No.6766 dated 14.03.1983 in his favour regarding the land measuring 7 Kanals 2 Marlas, Killa No.7, Rect. No.59 for a sum of ₹5000. The assertion of the petitioners is that as per the report of the Patwari (Annexure P8), said Bihari was owner only to the extent of 4 Kanals 19 Marlas and not 7 Kanals 2 Marlas, and thus sought to highlight that the claim of the complainant was based on falsehood. However, complainant failed to get the land mutated in his name on the grounds that Bihari had leased out more than his share of land and therefore, mutation was refused, orders of which have been placed on record as Annexure P9. Thus, petitioner No.1 claims that she was the owner of the land which she has sold to petitioners No.2 and 3 and has sought to place reliance on report of Halqa Patwari dated 19.12.2009 (Annexure P10).

The arguments of the two sides trickle down whether any offence under Sections 420/196/197/506 IPC was made out which forms

the basis of accusation in the report under Section 173 Cr.P.C. (Annexure P11 & P11/T)?

Contentions of Mr.Salil Bali, Advocate representing the petitioners are that it was a pure and pure dispute of civil nature regarding which a civil suit was pending between the complainant and the petitioners and has sought to highlight the allegations enshrined in the FIR (Annexure P6) wherein it sufficiently elicits that a civil suit filed by the complainant Balwan Singh deceased first in point of time to the registration of the FIR was still pending as per his own admission highlighted in his FIR. Thus, the matter as to the right, title and interest over the disputed property is subjudice before a Civil Court.

As is admitted even by learned counsel for the complainant, Mr.Dinesh Arora, Advocate, and which could not be refuted by learned State counsel that the land in question, as is the case of the petitioners and so is the case of the complainant respondent No.2, is a joint un-partitioned property. Thus, a million dollar question arises as to whether without effecting partition and determining the relative shares and the extent of these shares of the respective co-sharers, anyone can comprehensively claim that he/she was owner to such an extent? Admittedly, petitioner No.1 has sold her share through various sale deeds including the one in favour of petitioners No.2 and 3 and thus, at this juncture it would be too preposterous to hold the exact extent of the

share of petitioner No.1 and her right and entitlement to alienate the same in favour of petitioners No.2 and 3. Thus, it could not be, by any means, accepted as has been sought to be asserted by the respondent side that the petitioners have acted dishonestly and cheated them. Neither any undue wrongful loss nor any undue rightful gain has accrued to anyone out of the said transaction. It is only after partition upon determination of the respective shares, if anyone has sold the land more than his/her share and the sale deeds which have been executed subsequent and later in point of time to the earlier ones would be ipso-facto rendered otiose and the person would be thrown out of the share so sold in excess of the vendor.

Though the courts should refrain ordinarily from exercising powers under Section 482 Cr.P.C. however, where there has been miscarriage of justice apparent on the face of the records to prevent any circumvention of law and taking undue recourse to law which is not legally necessitated. In the present case, the complainant after filing the civil suit and unable to have any substantial interim relief except a mere order of status quo, has resorted to this criminal process, obviously aimed at as a pressure tactics upon the petitioners to force them to concede to his ingenuine demands and thus, the Court needs to show indulgence. The plain reading of even the report under Section 173 Cr.P.C. does not show or reflect any criminal act. Moreover, it is settled

proposition of law reference of which can be taken note of from the ratio laid down in '**Devendra v. State of U.P.**' 2010(4) RCR (Criminal) 448 and '**Joseph Salvaraj A. v. State of Gujarat & others**' 2011 AIR (SC) 2258 that in such an eventuality where the dispute is purely of civil nature the Courts need to put an end to such misuse of the process of law. Finding the present dispute to be purely of civil nature and there being no element of criminality involved, the FIR (Annexure P6) and all consequences arising out of the said FIR are hereby quashed and the petition stands allowed in those terms. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 12, 2016
rps

Whether to be referred to the Reporters or not?