

CRM No. M-31684 of 2012 and CRM No. M-37877 of 2012 (O/M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 21.1.2016

CRM No. M-31684 of 2012 (O/M)

Kanwaljit Singh Ahuja

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CRM No. M-37877 of 2012 (O/M)

Darshan Singh Kler

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sunil Chadha, Senior Advocate, with,
Mr. Kirpal Singh, Advocate, for the petitioners
in both the cases.

Mr. Amrit Pal Singh Gill, Assistant A.G. Punjab.

Mr. Paras Talwar, Advocate, for respondent No. 2
in both the cases.

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

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CRM No. M-31684 of 2012 and CRM No. M-37877 of 2012 (O/M)

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KULDIP SINGH, J.

By this single judgment, I will dispose of CRM No. M-31684 of 2012, titled as Kanwaljit Singh Ahuja Versus State of Punjab and another, and CRM No. M-37877 of 2012, titled as Darshan Singh Kler Versus State of Punjab and another, filed under Section 482 of Code of Criminal Procedure, 1973, for quashing of FIR No. 160 dated 8.11.2011, registered under Sections 379, 447, 511, 420, 465, 468, 471, 120-B, 182 IPC at Police Station Kurali, District SAS Nagar (Annexure-P-1) alongwith consequential proceedings arising therefrom, as the same is abuse of process of law as well as causing a grave miscarriage of justice on the grounds mentioned in the petition. For brevity, the facts have been taken from CRM No. M-37877 of 2012, titled as Darshan Singh Kler Versus State of Punjab and another.

It is alleged in the petition that there is involvement of a senior police officer, posted as SSP, Mohali, in shielding the real culprits, who had attacked the persons on the farm house of the petitioner, regarding which FIR No. 48 dated 22.9.2011, registered under Sections 323, 379, 447, 506, 511, 148, 149 IPC and under Sections 25, 27 of the Arms Act, 1959, was registered. The statements of the injured were twisted to shield the real culprits. The petitioner had earlier filed CRM No. M-31202 of 2011 before this

Court, seeking free and fair investigation after impleading Gurpreet Singh Bhullar, Senior Superintendent of Police, Mohali, as a party by name and levelled serious allegations against him.

On the orders of this Court passed in CRM No. M-31202 of 2011, the security was provided to the petitioner. Within around 30-40 days, the same accused, with an intention to kill the petitioner, fired upon him near Sector 35 roundabout in Chandigarh, and injured him, for which FIR under Section 307 IPC was registered against them. When the said accused, despite using their links, failed to get the said FIR cancelled, the petitioner again moved before this Court by filing CRM No. M-6901 of 2012, in which notice of motion was issued by this Court and the petition was tagged with the abovesaid criminal miscellaneous petition.

The petitioner Darshan Singh Kler claims that he had purchased 5 kanals 15 marlas, vide registered sale deed dated 30.11.2010/1.12.2010 from the original owners i.e. Bhag Singh son of Sawan and Smt. Prem Kaur wife of Sawan of village Nayagaon Karoran. The possession was also delivered to him and the mutation was also sanctioned. The petitioner, after spending a substantial amount, converted the same into a farm house and constructed some rooms thereon. He also got a fenced boundary wall and fixed a gate at the entrance. The said farm house is known

as 'Sidhu Farm House'. The petitioner has employed 4/5 persons as helpers. A few months after the purchase of the said land, one Col. B.S. Sandhu, his son and their henchmen started keeping eye on the said piece of land due to its proximity with the main road. Col. B.S. Sandhu and his son are the owner of World Wide Immigration Consultancy Services (WWICS), having its head office at Chandigarh. They are also the owner of 'Forest Hill Golf Course'. They are influential persons and have strong political links.

It is stated that on 20.9.2011, at around 10:00 AM in the morning, Col. B.S. Sandhu, his son D.S. Sandhu and their Manager Rajiv Bajaj alongwith 80-90 armed men in various vehicles went to the farm of the petitioner and D.S. Sandhu immediately fired at one of the caretakers of the farm house from his pistol, but the shot missed the target and when the caretakers tried to question them, he started beating Rajveer Singh with the iron rod. He was joined by his father and manager Rajiv Bajaj and other persons. They uprooted the gate and damaged the property and while leaving the place, took away some articles, belonging to the caretakers alongwith their mobile phones. At that time, the petitioner was busy in getting 'Tatima Registry' executed in his favour. The petitioner and other got the injured admitted in the hospital. One of them was admitted in Government Hospital, Sector-32, Chandigarh, and the

other three were admitted in Government Hospital, Phase-VI, Mohali. It is stated that the statement was recorded, but due to extraneous consideration, in the FIR, date 22.9.2011 was purposely put on the same. The FIR was diluted to help the accused by omitting the mentioning of fire shot by D.S. Sandhu and taking away of various articles. The surgery on the arm of the petitioner was done and he remained in the hospital for nine days. In place of arresting the real accused, an ante dated complaint (bearing date 20.9.2011) was got marked from SSP, Mohali to DSP City-2, SAS Nagar, on behalf of main accused Rajiv Bajaj. The Enquiry Officer, without bothering about the main incident, started finding loopholes in the 'Tatima Registry' and submitted his report dated 12.10.2011 and opined for cancellation of FIR No. 48 dated 22.9.2011, registered against the main accused and recommended registration of the present case against the present petitioner and K.S. Ahuja. Finally, FIR No. 160 dated 8.11.2011 under Sections 379, 447, 511, 420, 465, 468, 471, 120-B, 182 IPC, against the present petitioner, K.S. Ahuja and others, was registered at Police Station Kurali, SAS Nagar. It is claimed that the petitioner is the owner of the disputed property and that Bhag Singh was holding a registered Will in his favour, executed by his mother Prem Kaur on 18.10.2010, but this fact was not considered.

Reply of the State was obtained, in which the State took the stand that the petitioner, in connivance with his accomplice, forged the revenue record and tried to take forcible possession of the land, which was in possession of the Green Earth Society. The petitioner caused injuries with friendly hands to his accomplice and got them admitted in the hospital. It is stated that Tatima sale deed dated 20.9.2011 was got executed by mentioning the boundaries of the land, owned by the Green Earth Society. The action of the police in cancelling the FIR lodged by the petitioner and lodging the present FIR against the petitioner was justified. The reference was also made to the inquiry conducted by the police regarding forgery in the Tatima registry.

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

The perusal of FIR No. 160 dated 8.11.2011, registered under Sections 379, 447, 511, 420, 465, 468, 471, 120-B, 182 IPC at Police Station Kurali, District SAS Nagar, shows that it is on the basis of complaint dated 21.9.2011, addressed to the Senior Superintendent of Police, Mohali, against the present petitioner Darshan Singh Kler and K.S. Ahuja, levelling the allegation that they alongwith Gundas and Nihangs armed with arms, swords, spears and lathis tried to encroach upon the land of the Society in village

Karoran. It was further alleged that they uprooted the cement pillars fixed on the boundary wall and also caused extensive damage to the property of the applicant and 25 cement pillars were found missing from the spot. The complaint was lodged by Rajiv Bajaj of Green Earth Society. It is mentioned in the endorsement about the complaint and FIR registered by the petitioner and in the Tatima registry, it is found that there is forgery in the Tatima registry and effort was made to grab the land. Therefore, FIR No. 48, lodged by the petitioner was ordered to be cancelled and the present FIR was ordered to be registered.

In order to examine the real facts as to whether any offence is made out against the present petitioner and K.S. Ahuja from the FIR and whether the facts stated in the FIR and in the inquiry are correct, this Court is required to examine the documents placed on file by the parties.

The perusal of the copy of the sale deed regarding land measuring 5 kanals 15 marlas in favour of the petitioner (Annexure-P-2) shows that Bhag Singh on behalf of himself and being the general attorney of his mother Prem Kaur sold the land, measuring 5 kanals 15 marlas, which was 577/2124535 share, out of which share of Bhag Singh is 57/424907 and share of Prem Kaur is 292/2124535 of the land situated in Village Karoran. The total sale consideration

for the land was Rs. 28,03,500/-. It is further mentioned that the possession of khasra No. 84/29 with the following boundaries have been delivered :-

East – River	West - Land of Sardar Singh
North – Road	South – Land of Ram Asra

The sale deed was executed on 30.11.2010. The copy of Tatima sale deed of 20.9.2011 shows that it is also executed by said Bhag Singh for himself and being general attorney of his mother Prem Kaur wherein the original sale deed was amended and it was mentioned that wrong boundaries of the land, of which possession was delivered to the vendee, were mentioned in the sale deed. The correct boundaries are :

East – Gill Farm,	West – River,
North – Land of Bhag Singh,	South – Hill of Jagdish Singh Gopi.

However, khasra number was mentioned to be same i.e. 84/29. It was further mentioned that the possession of the said area was already delivered to the vendee. The endorsement of the registering authority alongwith photographs of the parties shows that it was registered on 20.9.2011 at 11:05 AM. In FIR No. 48 dated 22.9.2011, the time of occurrence is mentioned as 20.9.2011, 11:00 AM. In the present FIR No. 160 dated 8.11.2011, the date of occurrence is mentioned as 20.9.2011, but the exact time of

occurrence is not mentioned. No injury was caused to anybody and only cement pillars are stated to have been uprooted.

Now, coming to the land owned by the Green Earth Society, it comes out that the same can be made out from the copy of the civil suit (Annexure-P-8). The Green Earth Society had filed a civil suit on 21.9.2011, i.e. the date on which the complaint was made to the police, for permanent injunction and restraining Darshan Singh Kler and K.S. Ahuja from interfering in the peaceful possession of the land i.e. 10998/424907 share in the land bearing khasra Nos. 44/27 min (182-4, 47//3 min (134-10), 84/29 min (39-10) and 58/7812 (100-8). In the said civil suit, it is nowhere alleged that the Green Earth Society is in possession of the specific portion of the land. Darshan Singh Kler claims the possession of 5 kanals 15 marlas in khasra No. 84/29 min, total area of which is 29 kanals 10 marlas. The suit was filed on the day the complaint was filed by Rajiv Bajaj on behalf of the Green Earth Society, in which possession of specific portion in the said khasra number was not claimed. Vide order dated 7.10.2014, the learned Additional Sessions Judge SAS Nagar (Mohali), declined the injunction on the ground that the other party is also co-sharer in the said land. The finding of facts clearly show that Rajiv Bajaj, on behalf of the Green Earth Society, did not claim that they are in possession of any

specific portion and that the other party had come to take the possession of the specific portion. The allegations in the FIR are of trespass and removal of 25 cement pillars. Therefore, the allegations in this regard are apparently not supported by record and it appears that under the garb of the ownership of share, the complainant Rajiv Bajaj etc. were interested in occupying the specific portion, abutting the main road. The complainant has specifically alleged regarding construction of two rooms in farm house.

The second part of the FIR is regarding forgery in the Tatima registry. Admittedly, the sale deed was executed by said Bhag Singh for himself and on behalf of his mother Prem Kaur. It is also admitted fact that when Tatima registry was executed, Prem Kaur was dead. However, Bhag Singh was still competent to execute Tatima registry. It also comes out that during inquiry, the statement of Bhag Singh was recorded, which shows that even after the death of his mother, he is owner of the property, owned by his mother on the basis of a registered Will. He had taken the stand during inquiry that inadvertently, the recital in the sale deed was copied and it was mentioned that he for himself and on behalf of his mother as general attorney of Prem Kaur execute the Tatima registry. The recital regarding Prem Kaur in the Tatima registry

appears to have been copied from the sale deed due to clerical error. Admittedly, the power of attorney came to an end on the death of his mother, but on the basis of a registered Will, he had become the owner of the same. The said fact was completely ignored. Therefore, it cannot be said that the present petitioner had forged the Tatima registry regarding their original sale deed. The perusal of inquiry report shows that only one sided inquiry was conducted and all the facts were not considered. The crime scene was also not properly inspected. The copy of order dated 22.9.2015, placed on file today, shows that the said civil suit has already been dismissed in default under Order 9 Rule 8 of Code of Civil Procedure, 1908. It is clearly found from the Tatima registry that Darshan Singh Kler was present before the Joint Sub Registrar, Majri, at 11:05 AM on 20.9.2011, then, how could he be involved in the occurrence, which took place at his farm house at 11:00 AM on the same day ?

A strange procedure was adopted in this case wherein initially, FIR No. 48 dated 22.9.2011 under Sections 323, 379, 447, 506, 511, 148, 149 IPC and under Sections 25, 27, 54, 59 of the Arms Act, 1959 was registered against Col. B.S. Sandhu and others, on the basis of report No. 20 dated 20.9.2011 at Police Station Naya Gaon. When regarding an occurrence of FIR was already registered and the other party put-forward a cross version, the same was to be

investigated in the same FIR and after which the guilty party was to be challaned. However, in this case, the copy of impugned FIR shows that after the inquiry, it was ordered that FIR No. 48 dated 22.9.2011, under Sections 323, 379, 447, 506, 511, 148, 149 IPC and under Sections 25, 27 of the Arms Act, 1959, be cancelled and fresh FIR No. 160 dated 8.11.2011, under Sections 379, 447, 511, 420, 465, 468, 471, 120-B, 182 IPC, against the present petitioner and others be registered. Infact, the inquiry report and the facts mentioned above show that the allegations of forgery of Tatima registry are apparently false. The allegations of trespassing into the specific portion of land in possession of the Green Earth Society are also false and there is force in the contention of the learned senior counsel for the petitioners that due to interference of the senior police officer, posted in Mohali, the present FIR has been registered against the petitioners after cancellation of their FIR. Therefore, the present FIR is nothing, but a pressure tactic used by the opposite party with the help of police to compel the petitioners to come to their terms. It is nothing, but sheer misuse of the powers on the part of the police and misuse of process of law. Therefore, this is a fit case, in which, the present FIR should be quashed. Hence, FIR No. 160 dated 8.11.2011, registered under Sections 379, 447, 511, 420, 465, 468, 471, 120-B, 182 IPC, at Police Station Kurali, District SAS

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Nagar, alongwith all consequential proceedings arising therefrom,
stand quashed.

Both the petitions are allowed.

(KULDIP SINGH)
JUDGE

21.1.2016
sjks