

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-28438-2014
DECIDED ON: May 03, 2016

GURPREET SINGH AND OTHERS

....PETITIONERS

VERSUS

STATE OF PUNJAB AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers 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? (√)

Present: Mr. ADS Sukhija, Advocate,
for the petitioners.

Mr. J.S. Sekhon, AAG, Punjab.

JASPAL SINGH, J.

Through the instant petition preferred under Section 482 of the Code of Criminal Procedure, petitioners have sought quashing of FIR No. 56, dated 18.07.2013, under Sections 420, 465, 467, 468, 471 and 120-B IPC, Police Station Mulepur, District Fatehgarh Sahib as well as all the subsequent proceedings.

2. Learned counsel for the petitioners has contended that a false and frivolous complaint was moved by respondent No.2, on the basis of

which, the police registered the instant FIR being under pressure of senior

officers, with a view to grab the land of late Sh. Harbans Singh. The FIR proceeded on assumption of a Will left by late Sh. Harbans Singh in favour of petitioners No. 1 to 3, being fake or fabricated whereas original Will is already attached with civil suit filed by the petitioners. Even the revenue court is already seized of the matter. The police has ignored all these vital aspects. In fact, the land belonging to late Sh. Harbans Singh was inherited by the father of petitioners No. 1 to 3. Moreover, Jagdish Singh and petitioners No. 1 to 3 have been looking after late Sh. Harbans Singh during his life time and petitioners No. 1 to 3 were being treated by Harbans Singh like his sons. It was due to the said reason, Harbans Singh executed a Will in respect of his land in their favour during his life time. Not only this, even the last rites of Sh. Harbans Singh were performed by petitioners No. 1 to 3 and ashes were emerged at Kiratpur Sahib by them. However, after the death of Harbans Singh, his brother Harchand Singh come forward and extended threats to petitioner No.1 and his family members to stay away from the land owned by Harbans Singh. Harbans Singh breathed his last on 28.02.2013 and the mutation of his inheritance was sanctioned in favour of Harchand Singh on 18.03.2013, which is already under challenge.

3. Learned counsel for the petitioners further contends that the complainant is a person, who claims his status to the land by virtue of an agreement dated 25.05.2013 allegedly entered with Harbans Singh. The petitioner No.1 and his family was in cultivating possession of the land.

They started facing constant threats from the family of Harchand Singh,

who had the support of local land mafia as well as police official, who are eyeing the land in question. The frustration of the complainant rose to such an extent that they launched a murderous attack upon petitioners No. 1 and 2, in which petitioner No.2 sustained multiple gun shot injuries. Though, FIR was registered on the basis of complaint lodged with police by petitioner No.1 but due to the influence exercised by respondent No.2, he managed to get himself exonerated from the said case during investigation. Since, police as well as complainant were still not satisfied, they in connivance with each other got another FIR registered against petitioner No.1 on the allegations of trespass into the land in question, with a view to get possession of the land. Even, an attempt was also made to take forcible possession of the land in question upon which the police was informed and proceedings under Section 107/150 Cr.P.C. were initiated. The intention and purpose behind all this exercise is to get the land vacated by putting the petitioner and his family under the fear and pressure. Thus, the proceedings emanating are itself nothing but an abuse of the process of law, which is actuated by malafide and ulterior motive. Even otherwise, the ingredients, which constitute the aforesaid offences, are not established. Thus, the FIR as well as the subsequent proceedings emanating from it are liable to be quashed.

4. After bestowing due consideration to the submissions made by learned counsel for the petitioners and scrutinizing the documents available on file, this Court is of the considered view that there is no factual and legal substance in the various submissions made by learned

counsel for the petitioners.

5. Undisputably, after the completion of investigation, report under Section 173 Cr.P.C. has already been presented in the Court of Id. Jurisdictional Magistrate and there being a prima facie evidence, petitioners have already been charge-sheeted to face trial under Sections 420, 465, 467, 468, 471 and 120-B IPC and now, the trial is fixed for prosecution evidence. The petitioners have not preferred any revision against the framing of charge.

6. It is well settled proposition of law that when the charge has already been framed on the basis of allegations leveled in the report under Section 173. Cr.P.C. as well as document annexed with it, the petition for quashing the FIR is not maintainable. Moreover, various pleas which have been taken by learned counsel for the petitioners during the course of arguments can be termed to be the defence raised by the petitioners, which could be considered and dealt with by the trial court and on the basis of such an averments, the FIR cannot be quashed. Moreover, disputable question of fact cannot be gone into while exercising discretionary power under Section 482 Cr.P.C. Even otherwise, the power under Section 482 Cr.P.C. has to be exercised sparingly, carefully and cautiously only when such exercise is justified. Even otherwise, at this stage, it cannot be said that from the contents of FIR as well as documents collected by the investigating agency during investigation, do not disclose the commission of the offence for which the petitioners have been charge-sheeted.

7. To buttress this observation, we can have the reference of the

pronouncements of Hon'ble Apex Court delivered in case "*Swaran Singh and others vs. State through Standing counsel and another, 2008(4) RCR (Criminal) 74*" as well as that of this Court captioned as "*Gurbachan Singh Bhasin vs. State of Punjab and others*", 2013 (4) RCR Criminal 512.

8. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such the same is dismissed. However, the petitioners shall be at liberty to take all the pleas taken in this petition, during the course of trial.

May 03, 2016
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(JASPAL SINGH)
JUDGE