

244 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-31312 of 2014
DECIDED ON: JANUARY 18, 2016

HARKIRAT SINGH

.....PETITIONER

VERSUS

DALIP KAUR

.....RESPONDENT

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. Ashwani Chopra, Sr. Advocate with
Mr. Harminder Singh, Advocate
for the petitioner.

Mr. L.S. Sidhu, Advocate
for the respondent.

JASPAL SINGH, J

Instant petition has been preferred under Section 482 Cr.P.C. seeking quashing of complaint dated October 04, 2012 (Annexure P/1) captioned as *Dalip Kaur vs. Rusa Singh & others* and summoning order dated August 04, 2014 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Budhlada, whereby the present petitioner has been summoned to face trial under Sections 420, 465, 466, 467, 468, 471 and 120-B IPC and all subsequent proceedings arising therefrom.

2. Brief facts of the complaint are that Maghi Singh was owner of 1/8th share in land measuring 106 kanal 2 marlas and land measuring 3 kanal 4

marla situated in the area of Village Kulana. Maghi Singh was having one brother namely Bakshi Singh and one sister namely Ghukri who is already died. Maghi Singh was issueless and unmarried. About 10 years ago, Maghi Singh went missing and his whereabouts are not known till today, due to which, he is presumed to be dead. Complainant-Dalip Kaur is in cultivating possession of land belonging to Maghi Singh for the last 10 years. She is niece of Maghi Singh whereas accused No.1-Rusa Singh is nephew of Maghi Singh. However, all the accused in connivance with each other got mutation of inheritance of Maghi Singh sanctioned bearing No. 5262 in favour of Gukhri. Further, mutation of inheritance of Gukhri was sanctioned bearing No. 5263 in favour of accused No.1 which is absolutely against law. At the time of sanctioning of aforesaid mutation(s), accused No.4-Jaswinder Singh (Patwari) prepared false pedigree table (kursi nama) by not mentioning that complainant is one of the legal heirs of aforesaid Maghi Singh being daughter of his brother. It was also stated that mutation of inheritance of Maghi Singh was sanctioned by mentioning imaginary date of death of Maghi Singh as 21.08.1975. Accused No.1 also furnished false affidavit regarding death of Maghi Singh which was got attested from accused No.5-Harkirat Singh (petitioner).

3. At the very outset, it would be pertinent to mention that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

4. On the basis of preliminary evidence furnished by the complainant, petitioner as well as his co-accused were summoned to face trial under Sections 420, 465, 466, 467, 468, 471 and 120-B IPC vide impugned order dated August 04, 2014 (Annexure P-2). By virtue of this petition, a complaint (Annexure P-1), impugned order (Annexure P-2) and subsequent proceedings arising therefrom, has been challenged by the petitioner who was posted as Naib Tehsildar at the relevant time.

5. In pursuant to the complaint (Annexure P-1), petitioner being Naib Tehsildar has been summoned vide impugned order (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Budhlada. The role attributed to the petitioner is that he had connived with accused No.1 to 4 in sanctioning the mutation in favour of Rusa Singh-accused No.1 with regard to inheritance of Maghi Singh. Admittedly, no proceedings has been initiated by the complainant with regard to the mutation in question, which has been entered by the Patwari on March 02, 2012 and attested by Kanungo on March 23, 2012. Even, no civil suit has been filed by the complainant with regard to inheritance of the property of Maghi Singh. In fact, with regard to mutation an entry was made by the Patwari, which was attested by the Namberdar and Kanungo concerned and it was only thereafter, put up before the Naib Tehsildar who accepted the same and sanctioned the mutation as per Section 34 of the Punjab Land Revenue Act, 1887.

6. It would be apt and proper to reproduce the Section 34 of the Punjab Land Revenue Act, 1887:

Section 34: Making of that part of the annual record which relates to land-owners, assignee of revenue and occupancy tenants:-

(1) Any person acquiring, by inheritance, purchase, mortgage, or otherwise, any right in an estate as a land-owner, assignee of land-revenue or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.

(2) If the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

(3) The patwari shall enter in his register of mutations every report made to him under sub-section (1) or sub-section (2) and shall also make an entry therein respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which a report should have been made to him under one or other of those sub-sections and has not been so made.

(4) A Revenue-officer shall from time to time inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections, report should have been made to the patwari and entry made in that register and shall in each case make such order as he thinks fit with respect to the entry in the annual record of the right acquired.

(5) Such an entry shall be made by the insertion in that record of description of the right acquired and by the omission from that record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct..”

7. A glance at the aforesaid provisions transpires that on the basis of an entry made by Patwari, which was attested by Namberdar and Kanungo, petitioner being Naib Tehsildar was obliged to sanction the mutation. It cannot be inferred that the petitioner was hand in glove either with Patwari or with the beneficiary of the mutation. Rather it can be said that he has sanctioned the mutation while discharging his official duty. These facts were not taken into consideration by learned Magistrate while issuing the process qua petitioner.

Moreover, the instant complaint can be termed to be manifestly attended with mala fide and the proceedings can be said to be maliciously instituted, so far as the petitioner is concerned. The proceedings qua petitioner are liable to be quashed being manifestly against settled law. Even, if the allegations unfolded in the complaint are taken on its face value, it cannot be said that a case is made out to sanction the petitioner for commission of any offence for which he has been summoned to face trial.

8. In view of what has been discussed above, instant petition is allowed and complaint (Annexure P-1) as well as impugned order dated August 04, 2014 (Annexure P-2) and all subsequent proceedings arising therefrom, are quashed qua petitioner.

JANUARY 18, 2016
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(JASPAL SINGH)
JUDGE