

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

CRR No.3944 of 2014 (O&M)
Date of decision: 15th November, 2016

Balraj Singh and others

... Petitioners

Versus

Gurinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. K.S. Boparai, Advocate for the petitioners.

Mr. J.S. Jaidka, Advocate for respondent No.1.

Mr. C.S. Brar, Dy. Advocate General, Punjab
for respondent No.2/State.

FATEH DEEP SINGH, J.

The brief background which has led to the institution of present revision petition by the accused Balraj Singh, Harmesh Kumar alias Surinder and Surjit Singh alias Papa is that the complainant Gurinder Singh filed a complaint against them on the allegations that he was a poor person in possession of dwelling unit in a colony known as Dr.Ambedkar Colony, Ludhiana claiming that the accused are threatening to dispossess him as they claim that the complainant was living on the said land illegally and forcibly. It is alleged that on 15.05.1998 around 11.00 a.m. the accused, now petitioners, some of whom are functionaries of the local Improvement Trust, Ludhiana, illegally trespassed into the property and demolished the dwelling units

of the complainant as well as other occupants in the area in spite of there being a stay order of the Court, and claiming that the accused committed offences under Sections 447, 427, 436, 120-B IPC pertaining to Police Station Haibowal Kalan, Ludhiana. It is claim of the complainant that in spite of report having been made at the Police Station, the police have failed to lodge the FIR and in spite of another written complaint made on 15.05.1998 to the In-charge, Police Station Haibowal Kalan and thereafter the complaint in question was filed.

After the accused were summoned and finding to be an offence triable by the Court of Sessions, the case was committed. The Court of learned Additional Sessions Judge, Ludhiana finding prima facie case vide impugned orders dated 23.09.2014 framed charges against the petitioners Balraj Singh, Harmesh Kumar @ Surinder and Surjit Singh @ Papa for commission of offences under Sections 447/427/436 IPC to which the accused pleaded not guilty and claimed trial. The same is subject matter of present petition for revision whereby the petitioners accused have challenged the order framing charges as well as the chargesheet.

Heard Mr. K.S. Boparai, Advocate for the petitioners; Mr.J.S. Jaidka, Advocate for respondent No.1; Mr. C.S. Brar, Dy. Advocate General, Punjab for respondent No.2/State and perused the records.

The main contention of learned counsel for the petitioners Mr.K.S. Boparai is that the complainant along with others happens to be encroacher upon public land and it was the legal and legitimate recourse adopted by the authorities in evicting them and the present complaint has been filed as a counterblast as earlier a criminal case was got registered at the behest of the authorities against these illegal occupants and the present case is a pure misuse of the process of the Court entitling the petitioners to quashment of the same.

Though on behalf of the respondent No.1 Mr. J.S. Jaidka, Advocate has sought to refute the same on the grounds that the courts below have come to a prima facie conclusion of commission of offences and have rightly framed charges and it is during the course of trial culpability would be determined and no case for quashment is made out.

Appreciating the submissions, it is by no means a disputed point that a Regular Second Appeal by the Jhuggi Jhopri Dwellers, Ludhiana against the Ludhiana Improvement Trust was dismissed by this Court through judgment dated 20.01.2009 upholding the consecutive findings dated 30.08.2006 and 23.01.2007 of the Court of learned Civil Judge (Jr. Division) and learned Additional District Judge, Ludhiana respectively wherein it was specifically held that the appellants were not in settled possession of the suit land and even their possession was unlawful over the public property; thus is in itself suggestive that it was a public property on which the complainant and

others have encroached upon. It is by no means refuted by learned counsel for the respondent side that the occurrence on which complaint has been filed, is alleged to have taken place on 15.05.1998 whereas complaint has been filed on 12.11.1998, around six months thereafter, for which there is no substantive explanation coming forth, are matters which suggest as to what is at the back in the mind of the complainant. It is only allegations that have come up at the behest of the illegal occupiers which is sought to be taken as evidence by way of a news item published in news papers dated 17.05.1998 Ex.C2 and 16.05.1998 Ex.C3 that allegations have been levelled that the officials of the Improvement Trust, Ludhiana have put the Jhuggies on fire and even name of these officials did not find mention therein when admittedly the same was never proved as per the law of evidence and is duly acceded by the learned counsel for the respondent that none from the publishers side has been examined to legitimately and legally prove this news item. More so, it is the own case of PW2 Khushi Ram that in the year 1998 fire had taken place at the Jhuggies three times and that an FIR was lodged against them for encroachment of public land on 06.06.1998 and it was during the pendency of that criminal case the present criminal complaint has come about. The same certainly puts the Court on its guard to be vigilant enough to ensure that there is no undue recourse to law under the garb of a counterblast. The allegations that have sought to be levelled are nowhere substantiated by any means documentarily. As

has been pointed out by learned counsel for the petitioner, the very cross-examination of the complainant shows that he is merely claiming to be an occupier of dwelling unit and admits that neither the same was purchased by him nor allotted to him, are matters of much relevance. The most important aspect that has come in the evidence of the complainant is that he is living in a pacca house whereas it is his claim that the fire has engulfed Jhuggies thus, his very locus standi by such an admission certainly is put to doubt. The learned trial Court as is evident from the impugned order dated 23.09.2014 has failed to take cognizance of these important factors that have come about in the evidence. It is strange to note that this Court has dismissed the RSA of Jhuggi Dwellers on 20.01.2009 and the learned trial Court has passed impugned orders on 23.09.2014, after a long period of time and holding that the possession of the complainant is admitted by the accused side but at the same time it has to be seen that after the dismissal of the RSA in the absence of any refutation by learned counsel for the respondent that any stay order was there of a superior Court, the Improvement Trust being the owner of the property in question was well within its rights to legitimately take possession of their properties after having won the civil case and there cannot be assigned any criminality or illegality to the same.

The officials of the Improvement Trust in the process of getting the premises vacated have only acted in the discharge of their

official functions and the learned Court below has wrongly interpreted that the offences have been committed by public servants and which was not in the discharge of their public duties, when it is the own case of the complainant that the accused petitioners were the officials and functionaries of the local Improvement Trust, the owners of the land in question as held by this Court and their act in getting the premises vacated is certainly by all means in the discharge of their public duties and therefore, to the mind of this Court prior sanction in terms of Section 197 Cr.P.C. needs to be there as the very provisions have been created to protect responsible public servants to insulate them from possible vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants and as is there and can be construed the accused have no personal interests in the property in question and nor are the allegations of the complainant and being functionaries of the local Improvement Trust to facilitate the taking over of possession of the property by their employer have acted in the discharge of their official duties and thus, in view of the law laid down in **‘General Officer Commanding v. Central Bureau of Investigation’ AIR 2012 SC 1890**, the present prosecution has been launched contrary to the mandatory prerequisites of Section 197 Cr.P.C.

Going further, though not in any manner brought about in the arguments of learned counsel for the petitioners, the Hon’ble Apex

Court in the case of '**State of Haryana and others v. Ch.Bhajan Lal and others**' 1992 AIR SC 604, has clearly laid down the eventualities in which powers under Section 482 Cr.P.C. needs to be exercised and which are reproduced herein below to lay emphasis:

- (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.

Though the petitioners have not invoked the jurisdiction of this Court under Section 482 Cr.P.C. and have come up by virtue of a revision under Section 401 Cr.P.C. which has a very restricted approach, but in the totality of what has been detailed and discussed above it is certainly an exceptional case where learned trial Court has failed to prima facie adjudicate the evidence to reach a conclusion and rather is

totally a misuse of the process of the Court to undo the earlier evidence of dispossessing the Jhuggi Dwellers through legal recourse and lodging of the FIR against them for which at a subsequent belated stage such a thing has come about.

Thus, from this it clearly ensues that provisions of Section 482 Cr.P.C. though are to be sparingly used, can be used in exceptional cases to prevent misuse of the process of the Court and to meet the ends of justice. The prima facie allegations have nowhere brought about by direct evidence how or in what manner the accused have committed mischief and that the damage to the properties of the complainant and others were more than Rs.50/- and there is no semblance of evidence to that effect and similarly the very prerequisites that the said mischief was to accomplish destruction of the houses of complainant and others or that there was criminal trespass by the accused side and the entire evidence, documentary as well as oral, brought on the record nowhere prima facie brings about case of the complainant necessitating framing of charge under Sections 447/427/436 IPC against the petitioners. Apparently, there is a concerted effort by the Jhuggi Dwellers in the present case through the complainant to sabotage and frustrate the efforts of the public institution to get back its property which was under illegal occupation of the Jhuggi Dwellers, especially when already criminal case has been instituted by the public institution against the Jhuggi Dwellers and subsequent filing of the present complaint without

there being any substantive evidence to support the same, impels this Court to exercise its powers of revision in the larger interest as the impugned order is illegal and perverse, contrary to the evidence on the records, by way of acceptance of the instant revision petition and thereby setting aside order dated 23.09.2014 as well as the chargesheet of even date against the petitioners.

The revision petition stands allowed in those terms. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

November 15, 2016

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No