

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

**CRM-M-32247-2015(O&M)
Date of Decision: 04.05.2017**

Jagvir Singh Shergill and othersPetitioners
Versus

State of Punjab and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.D. Sharma, Advocate
for the petitioners.

Mr. P.S. Ghuman, Additional A.G., Punjab.

Mr. Sunil Chadha, Sr.Advocate with
Mr. M.S. Atwal, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.(ORAL)

CRM-14787-2017

Reply filed on behalf of respondents No.2 to 4 is taken
on record.

Application stands disposed of.

Main case

[1]. Petitioners seek quashing of FIR No.186 dated
21.12.2013 registered under Sections 447, 323, 427, 506, 148,
149 IPC at Police Station Division No.6, Jalandhar as well as
all the subsequent proceedings arising therefrom including the
challan.

[2]. As per FIR, the complainant party was involved in
engaging a crane from Cat Crane Service, Birring. The crane

was being driven by its driver Balwinder Singh. At about 11 AM, accused Jasvir Singh Shergil, i.e. owner of the adjoining land to the Mall and his nephew Jagvir Singh along with 5-7 unknown persons came to the site and started abusing the complainant party. When the complainant party did not stop ongoing work, they threatened the complainant party of dire consequences. Jagvir Singh raised a lalkara. Thereafter, the accused came inside after jumping over the wall and angle irons and started pelting bricks and stones. Jasvir Singh Shergil threw a brickbat, which hit on the left leg of the complainant. Accused party also inflicted internal injuries to the complainant party. The accused party also caught Ramankant DGM from his neck and threw him on the ground and also caused injuries to him. Jagvir Singh threw a brickbat on Balwinder Singh driver of the crane, which hit on his forehead. The unknown persons also pelted stones and caused damage to window panes of the crane. The other employees of the complainant party were also given injuries. On raising alarm, the assailants ran away from the spot.

[3]. In respect of alleged possession on excess land and protection of civil rights of the accused, they filed a civil suit for recovery of possession/permanent injunction and mandatory injunction. At the interim stage, having remained unsuccessful, the accused party ultimately ventured to file SLP No.10334 of

2014 in the Hon'ble Supreme Court, wherein the following order was passed on 28.04.2014:-

“Heard learned counsel for the parties.

There is no dispute on the issue of sale of land by the petitioner before this Court along with his mother to the respondents. The only dispute is whether the respondents are actually in possession and occupation of land which was sold by the petitioner and his mother. On the instant subject, there are allegations as also counter allegations.

To resolve the present controversy, learned counsel for the parties are agreed that a demarcation should be ordered. The said demarcation should be conducted by the Assistant Collector of the area concerned and that they would accept the demarcation conducted by the Assistant Collector without disputing the same.

In the above view of the matter, while disposing of the instant special leave petition, we direct the Assistant Collector of the area concerned to demarcate the land in question. The above demarcation shall be conducted in the presence of representatives of both the parties. Both the parties shall have to appear before the Assistant Collector on 01.05.2014 at 11.00 A.M. Needless to mention, that possession by both the sides will be based on the demarcation made by the Assistant Collector. Either of the parties found in possession of land not in its ownership will have to surrender the same to the other side, to make up its deficiency.

In view of the above determination, learned counsel for the parties are agreed that the main controversy raised by the parties in the suit stands adjudicated upon, and needs no further determination. Accordingly, the suit preferred by the petitioner shall be deemed to be disposed of in terms of the instant agreed order.”

[4]. In pursuance of aforesaid order of the Hon'ble Supreme Court, a demarcation was held by the Naib Tehsildar-cum-Assistant Collector, Jalandhar-I on 21.05.2014, wherein following observations were made in the report:-

“As per the orders of Hon'ble Court, by making the measurements of the land sold by petitioner Jasvir Singh and his mother, both the parties are required to be given possession of their land and in case any of the parties is found in possession of the land of the other party, the said party has been directed to surrender the land in excess possession. While conducting the measurements of the land, 23X5 karams measuring 13 marlas comprised in khasra Nos.13//3/2 owned by Jasvir Singh was found in possession of Curo India where iron fencing has been done, was got vacated at the spot and possession was got delivered to Jasvir Singh etc. 12X11 karams=14 marlas on the eastern side of khasra No.13//3/1 which was lying vacant was given to Curo India Private Limited. The presence sheet, and consent of both the parties regarding handing over of possession is enclosed. No dispute took place at the spot. After compliance of the orders of

the Hon'ble Supreme Court of India and preparation of the report, the file is being consigned to the record room.”

[5]. The FIR in question was registered on 21.12.2013, wherein allegations of trespass were made against the accused party. Having evolved a mechanism of making good the deficiency in the area of respective parties under the order of the Hon'ble Supreme Court, the allegations raised in the FIR cannot be diluted. As on the date of commission of offence, there was no such mechanism to evolve delivery of deficient area in favour of rightful claimant. It is only by virtue of demarcation dated 21.05.2014, the deficiency was made good and according to learned counsel for the petitioners, the excess area which was in possession of the complainant party was delivered in favour of the accused party.

[6]. Offence in terms of Section 441 IPC is in respect of trespass. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property would be dealt by the rigour of Section 441 IPC which is ultimately punishable under Section 447 IPC.

[7]. The bare perusal of the FIR in question and the facts on record would make out a case attracting the culpability of the accused persons in terms of offence under Section 441 IPC

punishable under Section 447 IPC.

[8]. Learned State counsel on instructions from ASI Sarabjit Singh submitted that the challan was presented on 09.02.2015 and thereafter, the case was adjourned on number of occasions for consideration of charge. Now, 09.05.2017 is the date fixed for framing of charge.

[9]. Learned counsel for respondents No.2 to 4 submitted that the occurrence did not take place on the portion of the land in the manner as suggested by the petitioners.

[10]. The case involves disputed questions of fact which cannot be appropriately adjudicated upon at this stage.

[11]. In view of above, I am of the view that no indulgence can be granted in favour of the petitioners in quashing of FIR. Resultantly, this petition is dismissed.

04.05.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No