

225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-37087-2011 (O&M)

Date of decision: 30.08.2017

Gurdeep Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Puri, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr.H.S.Kaler, Advocate for
Mr. Gurcharan Dass, Advocate
for respondents No.3 to 8.

Mr. C.S.Jattana, Advocate
for respondent No.10.

ARVIND SINGH SANGWAN, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing of order dated 17.05.2011 passed by the trial Court, vide which, the trial Court has, on appreciation of the report submitted by the police, directed the petitioner to further record his preliminary evidence by treating the case as a complaint case. This order was upheld by the Revisional Court vide order dated 15.11.2011. Thereafter, this present petition was filed in the year 2011 challenging the aforesaid orders.

Counsel for the petitioner has submitted that a perusal of the report submitted by the Block Development & Panchayat Officer, Doraha to District Development & Panchayat Officer (Annexure P-2), dated 12.07.2007, the Gram Panchayat has prepared certain forged documents regarding transfer of the property of the Gram Panchayat in favour of one

Dharampal Singh and the same has not been considered by the trial Court.

It is also submitted that in pursuance to the direction given by the trial Court, a report was submitted by ASI Gurmit Singh on 23.10.2010, which is reproduced as under:-

“Sir,

In pursuance of the complaint forwarded by you, we have inspected the site of the village and have concluded that out of the total property 13K-10M area is a pond (Toba) which is required for stablizing the level of ground water table, 5 M area is a gair mumkin Dharamshala and 1 K – 11 M area is a Samadh. Dharampal Singh has constructed permanent structure over this property, which was transferred to him by the Panchayat by taking undue advantage of its position. Copy of jamabandi of this property as well as report of B.D.P.O. is attached herewith.

*Gurmit Singh
ASI
P.S.Payal
23.10.2010”*

Counsel for the petitioner further submts that since as per the aforesaid two reports, cognizable offences were made out against the respondents-accused, the trial Court ordered for registration of an FIR against them. In support of his argument, counsel for the petitioner has relied upon the judgments of Hon'ble the Supreme Court in case of **Suresh Chand Jain Vs. State of Madhya Pradesh, 2001(1) R.C.R. (Crl.) 335** and **Hamant Yashwant Dhage Vs. State of Maharashtra and others** in **Criminal Appeal No.110 of 2016, decided on 10.02.2016**, to submit that

where a Magistrate has directed the police to register an FIR, in exercise of power given under Section 156(3) Cr.P.C. that the police must register an FIR. It is also submitted that once the report of the police was sought by the trial Court, police should have registered an FIR against the accused persons and therefore, the procedure followed by the trial Court, on appreciation of the report dated 23.10.2010, to treat the case as a complaint case and direct the petitioner to record the preliminary evidence, is patently wrong.

On the other hand, learned counsel for the respondents has submitted that no legal evidence has come on record to register an FIR against respondents No.2 to 8, the procedure adopted by the trial Court is preferably illegal.

After hearing learned counsel for the petitioner and on perusal of the judgments cited by him, I find no substance in the present petition. The Hon'ble Supreme Court in judgement Suresh Chand Jain's case (Supra) has held that a Magistrate is empowered to send the complaint to the police for investigation and registration of the case before taking cognizance and without examining the complainant and in case, it has been directed by the Magistrate to register an FIR, it is the duty of police to register the FIR, if cognizable offence was made out in the case and even if there was no direction of the Magistrate to register an FIR. However, on perusal of the report dated 23.10.2010, it is made out that the police while submitting the report has nowhere opined that a cognizable offence is made out and therefore, opted not to register any FIR. On appreciation of this report, the trial Court has passed the impugned order 17.05.2011, to treat the case as a complaint case and fixed the case for recording the preliminary evidence.

Therefore, I find no illegally in order passed by the trial Court as it has been
rightly upheld by the Revisional Court.

No merit. Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

30.08.2017
Hemlata

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