

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

**CRM No.M-38332 of 2015 (O&M)
Date of Decision: November 17, 2017**

Rajiv Jain and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Madan Gupta and Mr.Aayush Gupta, Advocates
for the petitioners.

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Nitin Thatai, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Rita Gulati for quashing the FIR No.77 dated 16.02.2015 under Sections 448, 323, 511, 506, 148 and 149 IPC registered at Police Station Focal Point, District Ludhiana along with all consequential proceedings arising out of the FIR.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

From the record, I find that the FIR in the present case has been got registered by Rita Gulati complainant. In the FIR, it is mainly stated

that there is a factory named Vidya Cycle Industry in her name and this

factory is lying closed during these days and for security, a Security Guard namely Ramesh Pandey has been deputed there, who is working for the last 14-15 years in the factory. On 30.01.2015 at around 8.30 p.m., her jeth (brother-in-law) Joginder Gulati, who has his factory along with her factory, called her and said that Chowkidar Ramesh Pandey told him telephonically that Sanjeev Jain, Rajiv Jain, Randeep Jain along with certain unidentified persons and their relative Subhash Gupta, came and broke the locks of factory and tried to take the possession of the same. Neighbours also gathered there. They pushed Security Guard Ramesh Pandey and took their welding set and went away. It is further in the FIR that the reason behind this is that Rajiv Jain and Sanjeev Jain have played fraud with the complainant and because of that, she has got registered a case under Sections 406, 419, 420 and 120-B IPC and due to this, they tried to take the possession over her factory.

Learned counsel for the petitioners argued that the accused are in possession over the disputed property as tenant. The proceedings have already taken place under SARFAESI Act and they have taken possession from the complainant. Learned counsel for the petitioners argued that earlier, the complainant was partner with the accused and that firm has been dissolved. Now, the petitioners are working exclusively and there are so many documents to show their exclusive possession i.e. telephone bill, electricity bill etc. Learned counsel for the petitioners also placed on record photocopy of the possession notice under the SARFAESI Act. Further, learned counsel for the petitioners argued that complainant stood surety for the loan taking by the firm M/s Durga Impex in which the present

paid qua which these proceedings under the SARFAESI Act have been initiated. Learned counsel for the petitioners next contended that M/s Durga Impex filed a civil suit against Dixit Gulati and firm of the complainant regarding interfering in the possession, the petitioners being the tenant and temporary injunction has been granted. On the other hand, learned counsel for respondent No.2 argued that this suit has been dismissed in default. Learned counsel for the petitioners states that as the possession has been taken under the SARFAESI Act, therefore, suit was got dismissed in default. Learned counsel for the petitioner further argued that complainant Rita Gulati also filed civil suit against Sanjeev Jain and others along with application under Order 39 Rule 1 and 2, in which learned Civil Court has held that the parties were the partners running its business under the name and style of M/s Durga Impex having its registered office at C-149, Phase-V, Focal Point, Ludhiana and in that application, it has been prayed for declaring to the effect that one dissolution deed dated 04.12.2012 and rent note dated 01.04.2012 are illegal, null and void.

The Court also observed that M/s Durga Impex has already availed loan from Bank of Baroda, Ludhiana Branch for availing cash credit limit to the extent of ₹3.25 cores and the above-said property is mortgaged with the bank and the parties to that suit i.e. present petitioners and complainant, are jointly and severally liable to pay the dues of the bank.

Learned counsel for the petitioners argued that in view of these documents, the possession of the present petitioners is there and the present FIR has been got registered only to harass the petitioners.

On the other hand, learned counsel for respondents argued that

security guard and tried to take possession of the factory and took away welding set from the factory of the complainant. It is further argued that the fact regarding possession is also to be determined by the Court below on the basis of the evidence.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that first of all, in the FIR, no specific number or dimension of the factory has been mentioned. At the time of arguments, on the specific enquiry from learned counsel for respondent No.2, whether firm of complainant M/s Vidya Cycle Industry etc. is in plot C-149, Phase-V, Focal Point, Ludhiana or somewhere else or whether M/s Durga Impex is a tenant factory on the above-said address, he could not give specific reply to this query. In the FIR, it is nowhere mentioned that in which property M/s Vidya Cycle Industry is situated and what are its dimensions. It is admitted fact that earlier the firm M/s Durga Impex was being run by the petitioners as well as the complainant. The complainant has challenged the dissolution deed and the rent note. If it is taken as it is, then it is clear that complainant was also partner of the firm. Then no question arises regarding taking the possession of the factory etc. It is admitted fact that present petitioners are partners of M/s Durga Impex. It is also proved on record and admitted fact that loan of ₹3.25 crores was taken from the Bank of Baroda and proceedings under SARFAESI Act are going on. The photocopy of the possession notice also shows that proceedings are taken up under the SARFAESI Act.

Learned counsel for the petitioners contends that now the possession has been taken from them in that proceedings. It is also clear

in question has been mortgaged with the bank for that loan. The order passed in the civil suit, copy of which is Annexure P-2, on the application under Order 39 Rule 1 and 2, the Court has granted stay against Dixit Gulati i.e. complainant party, which also supports the version of the petitioners that they were in possession of the property. Otherwise also, owner of factory will not come at night time to take welding set from the factory of the complainant by giving push to chowkidar/guard. The enmity and litigation between the parties prior to the occurrence is duly proved. It is also argued that telephone bill and electricity bill etc. are also in the name of the petitioners.

Keeping in view all the facts and circumstances of the present case, I find that the registration of FIR in question is nothing but abuse of process of law and has been got registered only to harass the petitioners. There is no dispute qua the law that findings of fact are to be given by the trial Court on the basis of the evidence but in the present case, on the face of it, it is clear that present FIR is nothing but abuse of process of law and amounts to miscarriage of justice.

Therefore, finding merit in the present petition, the same is allowed. FIR No.77 dated 16.02.2015 under Sections 448, 323, 511, 506, 148 and 149 IPC registered at Police Station Focal Point, District Ludhiana and all subsequent proceedings arising therefrom, are hereby quashed.

November 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No