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

**CRM-M-43906-2014 [O&M]**

**Date of Decision:- December 11, 2017**

Lakhwinder Singh Gill

....Petitioner

Versus

Sukhwant Singh and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present: Mr. S.S.Bhinder, Advocate,  
for the petitioner.

Mr. D.S.Virk, Advocate,  
for respondent No.1.

**SHEKHER DHAWAN, J.**

Present petition under Section 482 of Code of Criminal Procedure [**"the Code"**] is for quashing of order dated 28.10.2014 (Annexure P/9) passed by learned Sessions Judge, Sri Muktsar Sahib, whereby petitioner, Lakhwinder Singh Gill was ordered to be charge-sheeted under Section 420 IPC and order dated 6.11.2012 (Annexure P/7) passed by Sub Divisional Judicial Magistrate, Gidderbaha was set-aside.

2. Facts relevant for the purpose of decision of this petition; that originally, a complaint dated 09.08.2006 (Annexure P-4) was filed by Sukhwant Singh against present petitioner, namely, Lakhwinder Singh Gill, Naib Tehsildar, Lambi and other co-accused namely, Sukhcharan Kaur, Niranjana Singh and Jaspal Singh (accused Nos. 2 to 4 respectively) on the ground that the complainant is in possession of land measuring 32 Kanals

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and 9 Marlas in Village Lambi and is in possession of the same since long and is cultivating the same. As per the jamabandi, the ownership has been shown to be of Provincial Government and same was allotted to Tehal Singh son of Sulakhan Singh, whereas Tehal Singh never remained in possession of the land. Tehal Singh died and inheritance was sanctioned in the name of his widow, daughters and son vide mutation No. 2189 though, the land never remained in possession of Tehal Singh or his inheritors. Earlier Piara Singh son of Tehal Singh was in possession of land and later on, the complainant and Jaspal Singh son of Piara Singh were in possession of the same. The corresponding entry was recorded in the Jamabandi and *khasra girdawari* and the possession of the complainant was in the knowledge of entire village. However, Sukhcharan Kaur and Niranjana Singh in connivance with Jaspal Singh, purchased the land vide sale deed Nos. 190 and 191 from the legal heirs of Tehal Singh without change of possession, whereas the legal heirs of Tehal Singh had no right to sell the land. Mutations No. 2217 and 2218 were sanctioned in their names, whereas the possession was of the complainant alone. The *girdawari* was recorded in the name of above accused, namely, Sukhcharan Kaur and Niranjana Singh even without visiting the spot. On appeal filed by the complainant against the said order and the same was set aside by Sub Divisional Magistrate (SDM), Malout. After remand of the matter, Jaspal Singh was transferred and *girdawari* was restored in the name of the complainant. Thereafter, present petitioner, Lakhwinder Singh Gill was transferred to Lambi and the petitioner in-connivance with above mentioned accused Nos. 2 and 3, sanctioned *girdawari* in favour of

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Sukhcharan Kaur, Niranjana Singh vide order dated 10.10.2005, though he had no authority to do so. The said order was wrong and the same is transpired so because that was passed without any spot inspection and it was known to the present petitioner that the actual possession of the land was with the complainant. The jamabandi and girdawari were corrected accordingly just to help accused No. 2 and 3.

3. On this issue, Sub Divisional Judicial Magistrate (SDJM), Giddarbaha passed the order dated 06.11.2012 and discharged the accused by recording the finding that a person in possession cannot claim to have perpetual right of possession over a piece of land, especially when land in question was allotted to a person, namely, Tehal Singh son of Sulakhan Singh, whose L.Rs sold the same to accused No. 2 and 3. Findings were also recorded that the complainant failed to establish as to how any inducement was given to accused to deliver any property against his rights. The observation was also recorded that the necessary correction was made in compliance with the order of District Collector and it had come on the file by way of cross-examination of the complainant himself that there is no rapat in the revenue record vide which the complainant got the possession, rather his name was recorded in the revenue record for the first time in the year 1978-1979 without there being any order in support thereof and another civil suit was pending. Taking all these factors into consideration, learned Magistrate passed the order of discharge of the accused persons under Section 245 of the Code.

4. The said order passed by Sub Divisional Judicial Magistrate was challenged before learned Sessions Judge, Sri Muktsar Sahib by way

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of revision petition and the said petition was accepted vide order dated 28.10.2014 (Annexure P/9) and the said order is being impugned in this case.

5. Learned counsel for the petitioner while assailing the said order submitted that the present petitioner, Lakhwinder Singh Gill was working as Naib Tehsildar and whatever order was passed by him, that was passed in his official capacity while exercising the powers of Assistant Collector Grade II, Lambi under the Punjab Land Revenue Act and his acts are protected from prosecution under the Judges (Protection) Act, 1985. More so, the order was passed regarding correction of *khasra girdawri* in favour of respondents no. 2 and 3, on the basis of order dated 21.9.2005 (Annexure P/1) passed by the District Collector. However, learned Sessions Judge while passing the impugned order completely ignored the order of District Collector regarding correction of *khasra girdawari*. In fact, in the column of 'Cultivation', the name of cultivator is mentioned as Sukhwant Singh, Tehal Singh sons of Sulakhan Singh, whereas, respondent No.1 is Sukhwant Singh son of Bohar Singh and in view of that no wrong has been done to respondent no.1.

6. Learned counsel for the petitioner also submitted that no sanction under Section 197 of the code has been obtained before prosecution of the petitioner as a public servant while discharge of his duties as such.

7. Learned counsel for respondent no.1 submitted that in such like cases, no sanction under Section 197 of the Code is required, rather the petitioner had passed the orders Annexures P/2 and P/3 on

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10.10.2005 in connivance with accused Sukhcharan Kaur and Niranjan Singh to defeat the valuable rights of respondent No.1 and as such, the present petition is liable to be dismissed.

8. Having considered the above submissions made by learned counsel for the parties and appraisal of record of the case, this Court is of the considered view that the real dispute in the matter is regarding piece of land measuring 32 Kanals 9 Marlas, which is shown to be of the ownership of Provisional Government and as per the jamabandi, the same was allotted to Tehal Singh son of Sulkhan Singh. Sukhwant Singh, respondent no.1/complainant was not the owner of the suit property at any stage, rather he is claiming his right on the basis of long established possession. The order dated 10.10.2005 was passed by present petitioner, Lakhwinder Singh Gill in his official capacity while working as Naib Tehsildar while discharging his quasi-judicial functions. Nothing was proved on the file that there was any nexus between the present petitioner and co-accused. Learned trial Magistrate while passing the order of discharge of the accused under Section 245 of the Code had rightly recorded the finding that the complainant himself admitted in his cross-examination that there was no rapat in the revenue record vide which he got the possession. His name was recorded for the first time in the revenue record in the year 1978-79 and that too, without the support of any order. No such application was moved before the Patwari for entering his name in the *khasra girdawari*.

9. Another important aspect having been revealed in the statement of complainant/respondent No.1 himself was that a civil suit was

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pending in the Court of competent jurisdiction. Undisputedly, the matter in controversy is primarily civil in nature and ultimately the decision of the Civil Court is to prevail upon as to the ownership rights. The order passed by present petitioner was in compliance with the order of District Collector dated 21.09.2005 (Annexure P/1) as the matter was remanded to him and while doing so, the present petitioner discharged his duties as Naib Tehsildar in his official capacity and his acts are certainly protected and if any prosecution is to be launched against such a public servant, sanction as required under Section 197 of the Code was required. This has been so held by Hon`ble Supreme Court in Surinderjit Singh Mand & Anr. Vs. State of Punjab and Anr., 2016 (3) R.C.R. (Criminal) 654, wherein while dealing with the issue of obtaining sanction under Section 197 of the Code, Hon`ble Apex Court observed as under:-

“22. The law declared by this Court emerging from the judgments referred to hereinabove, leaves no room for any doubt, that under Section 197 of the ‘Code’ and/or sanction mandated under a special statute (as postulated under Section 19 of the Prevention of Corruption Act) **would be a necessary pre-requisite**, before a Court of competent jurisdiction, takes cognizance of an offence (whether under the Indian Penal Code, or under the concerned special statutory enactment). The procedure for obtaining sanction would be governed by the provisions of the ‘Code’ and/or as mandated under the special enactment. The words engaged in Section 19 of the ‘Code’ are, “...no court shall take cognizance of such offence except with previous sanction...”. Likewise sub-section (1) of Section 19 of the Prevention of Corruption Act provides, “No Court shall take cognizance.. except with the previous sanction...”. The mandate is clear

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and unambiguous, that a Court “shall not” take cognizance without sanction. The same needs no further elaboration. Therefore, a Court just cannot take cognizance, without sanction by the appropriate authority....”

10. In the present case, that has not been done. However, learned Sessions Judge completely ignored all the above facts while passing the impugned order and thus, wrongly set-aside the well reasoned order passed by Sub Divisional Judicial Magistrate, Gidderbaha dated 6.11.2012 whereby the present petitioner was discharged.

11. In view of the above, the present petition is accepted and the order dated 28.10.2014 (Annexure P/9) passed by learned Sessions Judge, Sri Muktsar Sahib is set-aside.

12. Present petition stands allowed in the above terms.

**December 11, 2017**  
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**( SHEKHER DHAWAN )**  
**JUDGE**

Speaking/Reasoned  
Reportable

Yes  
Yes