

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

CRR-2586-2013 (O&M)

Date of decision :16.08.2017

Gursewak Singh

..... Petitioner

Versus

The State of Punjab and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. T.P.S. Tung, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab
for respondent No.1.

Mr. Vishal Rattan, Advocate
for respondent No.2.

H.S. MADAAN, J.

This revision petition is directed against order dated 01.06.2013
passed by the Judicial Magistrate Ist Class, Barnala for framing of charge
against the petitioner-Gursewak Singh for offences under Sections 447, 380,

336, 148 and 149 of the Indian Penal Code (“IPC” - for short).

Briefly stated facts of the case as per prosecution version are that Rajvir Kaur wife of Niranjana Singh retired Headmaster resident of village Raisar, Punjab had addressed a written complaint to Senior Superintendent of Police, Barnala seeking registration of FIR, in which the subject matter of the complaint was regarding taking of forcible possession of the land with the help of anti-social elements. Inter alia in the complaint it was contended that Gurdeep Kaur had taken divorce from her husband in the year 1994. She had given birth to two children, a boy and a girl. The girl is residing in England, whereas boy namely Amarjit Singh has been putting up at village Raisar. The complainant had purchased a kothi located in 14 acres of land along with electric motor installed therein. On 03.05.2002 Gursewak Singh brother-in-law of Amarjit Singh resident of Bathinda came to Raisar village along with certain boys to take possession of the land forcibly, but when police was informed they fled from the spot. FIR in that regard was registered at Police Station Pakho Kachian. According to the complainant, paddy crop had been sown in those fields. The crop was harvested therefrom then it was watered for sowing wheat crop on 22.10.2002. Gursewak Singh son of Sarwan Singh resident of Model Town Bathinda along with goons of Bathinda duly armed with three rifles, four *Gandas*, two tractors and one Indica car started ploughing the said land in the absence of the complainant. The complainant had informed SHO Police Station Sehna. The police arrived at the spot and caught hold of six persons along with three rifles, four *Gandas*, one car, tractor and *Gandasa* Tawia. However, on receipt of call from DIG, Patiala further action against the culprits was stopped and rather security proceedings against both the parties were initiated; that on the same set of allegations FIR

No.36 dated 25.05.2002 under Sections 447, 148, 149 IPC was registered on the basis of statement of Sh. Niranjn Singh (since died) at Police Station Sehna District Barnala; that Rajvir Kaur is second wife of Niranjn Singh and she has got present FIR registered on the same set of facts against the same accused by submitting a separate complaint.

After investigation in case FIR No.74 dated 16.10.2004 for offences under Sections 447, 380, 336, 148, 149 IPC Police Station Sehna, police had presented an untraced report in the Court. On receipt of that untraced report, Illaqa Magistrate issued notice to the complainant. Complainant-Rajvir Kaur appeared and filed a protest petition; that during the pendency of the investigation, husband of complainant namely Niranjn Singh had filed a petition before Punjab State Human Rights Commission, wherein ADGP had submitted a report stating that challan as relating to that FIR was to be presented; that while Court was dealing with protest petition filed by Rajvir Kaur-complainant, the complainant presented report of ADGP filed in Punjab State Human Rights Commission, on the basis of said report, a report under Section 173 Cr.P.C. was presented. However, as per directions of ADGP (Crime) the FIR was registered and case was investigated. During course of investigation accused Gursewak Singh and others were arrested. However, they were released on bail. It may be mentioned here that Illaqa Magistrate while dealing with the untraced report filed in the case issued direction dated 19.01.2007 to SSP Barnala to present challan and FIR No.74 dated 16.10.2004. The petitioner is aggrieved by such action of the Magistrate stating that Magistrate had exceeded his jurisdiction by issuing such direction.

The petitioner had challenged the said order in this Court and vide judgment dated 19.02.2008 order was quashed. However, the case was

remitted to Judicial Magistrate Ist Class, Barnala to proceed with the matter in accordance with law observing that it would be open to him to order further investigation in the matter. According to the revision-petitioner after passing of this order the police of Police Station, Sehna without considering the judgment / orders again presented challan under Section 173 Cr.P.C. in FIR No.74 dated 16.10.2004 for offences under Section 447, 380, 336, 148 and 149 IPC. Obviously this was done on the basis of order of 19.01.2007, which had already been quashed by this Court vide order dated 19.02.2008. According to the petitioner challan was presented in the Court on 24.04.2007 and Judicial Magistrate Ist Class ordered the Ahlmad to check and report but since by that time further proceedings was stayed and the challan was returned on 24.04.2007. However, the same challan was presented in the Court on 08.11.2008 it was signed and checked by Ahlmad on 08.11.2008; that no further investigation or re-investigation was ordered by the trial Court but the police presented the same challan which was earlier presented in the trial Court before passing of orders dated 19.02.2008 by this Court; that the trial Court has committed grave error in framing charge against the petitioner under Sections 447, 380, 336, 148 and 149 IPC and the said order deserves to be quashed.

Notice of revision petition was given to the respondents who had put in appearance.

Learned counsel for the petitioner has advanced arguments on basis of pleas taken in the revision petition, whereas learned State counsel assisted by learned counsel for the complainant have vehemently argued that the revision petition is absolutely without any merit inasmuch as the petitioner had earlier approached this Court by way of filing contempt petition bearing **COCP No.477 of 2009** alleging that respondents had

disobeyed order dated 19.09.2008 passed by this Court in **CRM-M-24181-2007** titled as **Gursewak Singh vs. State of Punjab and others** vide order dated 19.01.2007 and order dated 24.02.2007 passed by Judicial Magistrate Ist Class, Barnala were quashed and case was remitted to Judicial Magistrate Barnala to proceed in accordance with law, however that revision petition was dismissed on 09.07.2009 observing as follows:-

“In response to show cause notice issued by this court, respondents have filed reply denying the allegations made in the contempt petition and submitted that the report under Section 173 Cr.P.C. was presented after its due scrutiny and consideration of the orders passed by this Court.

I have heard learned counsel for the parties. A perusal of the order dated 19.02.2008 passed by this Court would show that this Court while quashing orders Annexures P-2 and P-3 had not quashed the final report of investigating presented under Section 173 Cr.P.C. and only remanded the case to the Court of JMIC Barnala to decide the matter in accordance with law. It is not in dispute that the respondents had submitted the report again under Section 173 Cr.P.C. along with the case file. It is open to the petitioner to contest the same in the Court of JMIC Barnala.

Thus, I find no material on the basis of which cognizance can be taken against the respondents for violation of the orders passed by this Court on 19.02.2008 in CRM-M-24181-M-2007.

In view of the aforesaid, no further action is required.

Rule discharged.

However, it will be up to the petitioner to seek any other

appropriate remedy available to him to seek the cancellation of report submitted by the respondents under Section 173 in FIR No.74 in accordance with law.”

Further the petitioner had filed **CRM-M-6431-2009 (O&M)** but had withdrawn the same on 13.01.2011. The petitioner had even filed a quashing petition bearing **CRM-M-20921-2012 (O&M)** under Section 482 Cr.P.C. seeking quashing of FIR No.74 dated 16.10.2004 along with consequential proceedings arising therefrom pending in JMIC, Barnala, however, that revision petition was disposed of with liberty to the petitioner to contest the same before contempt Court and raise all the objections taken in the petition or any other objection available to him at the time of framing of charge.

After hearing the rival contentions and going through the record I am of the considered view that petition in hand is doomed for failure. The petitioner has already availed of several remedies of filing contempt petition, quashing petition but remained unsuccessful there. There does not seem to be any illegality or infirmity in the order framing formal charge against the accused. The accused seems to be more interested in prolonging the proceedings by way of filing one petition or the other as a delaying tactics. He has successfully stalled the passing of final order by keeping an order to that effect from this Court on 05.09.2014. There is absolutely no merit in the revision petition, the same stands dismissed accordingly.

16.08.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No / Yes**
2. Whether speaking / reasoned? **No / Yes**