

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

**CRM-M-1605-2016(O&M)
Date of decision:-22.2.2018**

Zora Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

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

Present : Mr.Nitesh Singhi, Advocate
for the petitioners.

H.S. MADAAN, J.

Petitioners - Zora Singh, Ranjit Singh and Sukhdev Singh have filed the present petition under Section 482 Cr.P.C. for quashing of the impugned order dated 27.8.2014 passed by learned Additional Sessions Judge, Fatehgarh Sahib vide which the revision petition filed by the present petitioners against the order dated 12.3.2014 passed by Sub Divisional Magistrate, Fatehgarh Sahib has been upheld without considering the facts and evidence.

Briefly stated, the facts of the case as can be gathered from the perusal of the petition are that the petitioners had filed an application under Section 133 Cr.P.C. to get watercourse bearing Khasra No.67(4-7) and passage bearing Khasra No.50(14-15) situated in village Molko

Majra, Tehsil and District Fatehgarh Sahib vacated by removal of obstructions/encroachment made by the petitioners over there, however, before moving the said application, the respondents/applicants submitted an application before the competent authority for demarcation of disputed land; that on an application demarcation was conducted by the officials of the concerned department; that the petitioners and private respondents are also *khewatdars* of village Molko Majra and the land of the parties abutted to the watercourse and passage; that the watercourse and passage in dispute approached to the land of the respondents, who have allegedly no other source of irrigation and passage for ingress and egress to the land; that the alleged passage is not in working condition and there is no water passing in the watercourse for last several years; that the petitioners had forcibly and unlawfully obstructed the watercourse/passage by constructing a room and by cultivating wheat crop on it; that on getting notice, the petitioners put in appearance and have categorically stated that the application is not maintainable; that on merits it was submitted that the property did not lead to the land of the private respondents while the passage and watercourse in question were not used by private respondents; that during the trial Local Commissioner (Tehsildar) was appointed, who submitted his report mentioning that the petitioners have encroached some portion of the watercourse and passage, however, the Local Commissioner did not disclose the area said to have been encroached upon; that thereafter Sub Divisional Magistrate, Fatehgarh Sahib by taking recourse to Section 133 Cr.P.C. vide order dated 21.5.2009 directed the petitioners to remove the encroachment; that the petitioners had filed criminal revision

petition against the order, which was allowed vide order dated 25.1.2011 and a direction was issued to Sub Divisional Magistrate, Fatehgarh Sahib to pass a fresh order in consonance with Section 134 Cr.P.C.; that as a matter of fact the private respondent Pritam Singh withdrew his claim by suffering statement to the effect that on 14.5.2012 the petitioners had not encroached the property in dispute; that the application under Section 133 Cr.P.C. was dismissed vide order dated 31.5.2012; that the respondents filed revision petition on 12.7.2012 against the order dated 31.5.2012 but it was dismissed vide order dated 23.4.2013 with a direction to Sub Divisional Magistrate, Fatehgarh Sahib to hear the arguments of the parties afresh and then pass a speaking order giving detailed reasons after considering the evidence available on the record; that thereafter Sub Divisional Magistrate, Fatehgarh Sahib directed the Tehsildar to visit the property in dispute and submit his report; that Tehsildar accordingly did so submitting his report stating that the property bearing Khasra No.50 (14-15) comprised in Khewat No.120 and Khatauni No.219 was thoroughfare of Nagar Panchayat and in possession of the department concerned whereas property bearing Khasra No.67(4-7) was of co-owners and other inhabitants and was in possession of cultivators and was of watercourse; that thereafter Sub Divisional Magistrate, Fatehgarh Sahib passed an order dated 19.2.2014 under Section 133 Cr.P.C. directing the petitioners to remove the illegal possession; that in compliance with the order dated 19.2.2014 and 12.3.2014, a so called conditional notice was again sent by Sub Divisional Magistrate, Fatehgarh Sahib; that thereafter again on 31.3.2014 Sub Divisional Magistrate, Fatehgarh Sahib issued

so called conditional notice under Section 133 Cr.P.C. to petitioners to remove illegal encroachment; that the petitioners had filed a revision petition before learned Sessions Judge, Fatehgarh Sahib; that along with the revision petition, the petitioners have filed an application for staying the operation/execution of the impugned order dated 12.3.2014 and for staying the further proceedings before the lower Court; that according to the petitioners, there was no need to pass another order/notice dated 31.3.2014 and it has been passed against settled proposition of law; that learned Additional Sessions Judge, Fatehgarh Sahib without the legal proposition and pleadings of the petitioners dismissed the revision petition on the ground that the same is filed against interim order dated 12.3.2014 instead of 31.3.2014 was not maintainable; that learned Additional Sessions Judge, Fatehgarh Sahib admitted that no doubt provisions of Section 133 Cr.P.C. are conditional and provisions of Section 144 Cr.P.C. are absolute, therefore no absolute order can be passed under Section 133 Cr.P.C. In the end, a prayer has been to accept the petition.

I have heard learned counsel for the petitioners besides going through the record.

A perusal of the order dated 12.3.2014 passed by Sub Divisional Magistrate, Fatehgarh Sahib goes to show that conditional notice under Section 133(1) Cr.P.C. issued in the petition filed by Pritam Singh, Prem Singh, Charan Singh @ Gurcharan Singh and Nirmal Singh against Zora Singh, Ranjit Singh and Sukhdev Singh wherein it was mentioned that order has been passed on 19.2.2014 that respondents are having illegal possession over some part of khasra number mentioned

above, therefore they were instructed to come present to the Court after removing the illegal possession and submit report on 31.3.2014 and in case of not doing so then further action as per rules would be taken. Thereafter, on 31.3.2014, Sub Divisional Magistrate, Fatehgarh Sahib passed order to the effect that vide order passed on 19.2.2014, respondents were directed to vacate the path and to file report on 16.4.2014 and in case of not doing so further action in accordance with law would be taken. Zora Singh, Ranjit Singh and Sukhdev Singh had preferred a revision against the order dated 12.3.2014 vide which conditional order has been passed by Sub Divisional Magistrate, Fatedhgarh Sahib. Learned Additional Sessions Judge, Fatehgarh Sahib disposed of the revision petition with following observations:

Now the question arises as to whether the said grounds taken by the revisionists admittedly in possession of the passage and water course in dispute indirectly are sustainable or not because the existence of the passage and watercourse as per revenue record referred in the report dated 10.5.2011 cannot be ignored and was not more private property after carving for public purpose as per settled principle of law. The revisionists or any one else could not encroach upon the same in any manner rather the such kind of encroachers of the said public passage and water course were required to be held criminally by concerned authorities to maintain public properties instead of only passing simple order of removal of encroachment affected on the same. The provisions of Section 133 of

Cr.P.C. no doubt are conditional and provisions of Section 144 of Cr.P.C. are absolute as referred in Kachrual Bhagirath Agarwal & others Vs. State of Maharashtra & others 2005(1) CrI.CC-125 (SC) but at the same time one more view has been taken in the same that the purpose of the provision of Section 133 of Cr.P.C. is to prevent public nuisance and to involve a sense of urgency for public comfort and the crux of the views taken in the referred citation by Hon'ble Apex Court court goes against the act of the revisionists and resulting of which the contention of the learned counsel for the revisionists is not sustainable.

The criminal revision No.19 dated 11.4.2014 filed by revisionists against the interim order dated 12.3.2014 instead of order dated 31.3.2014, being not maintainable and sustainable, is thus dismissed and order the dated 12.3.2014 is affirmed as such for its implementation as per directions given in the aforementioned citation and in so many other citations on similar matters for removal of encroachment from the public properties. The record of Sub Divisional Magistrate, Fategarh Sahib with copy of this order be transmitted to the same to proceed further as per order said dated 23.4.2013.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order while

exercising powers under Section 482 Cr.P.C.

The petition being without merit stands dismissed accordingly.

22.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No