

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-17705 of 2016

Date of Decision: 26.09.2018

Arvinder Kaur @ Ravinder Kaur & others

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. G.S. Sirphikhi, Advocate
for the petitioners.

Mr. Tanvir Joshi, AAG, Punjab.

HARI PAL VERMA, J. (Oral)

Petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.80 dated 17.05.2015 (Annexure P-1) under Sections 447/511/148/149 IPC and Section 25 Arms Act, registered at Police Station City SBS Nagar, District SBS Nagar as well as report under Section 173 CrPC (Annexure P-2) filed in the Court of Additional Chief Judicial Magistrate, SBS Nagar under Sections 447/148/149 IPC and all consequential proceedings arising therefrom.

The aforesaid FIR was registered at the behest of Baldev Raj, to the effect that the land in dispute is joint in the names of his brothers Resham Lal, Des Raj, Major Singh sons of Chain Ram, residents of Punni

Mazara and his sisters-in-law Sita w/o Des Raj, Surinder Kaur w/o Resham Lal and relative Gurbaksh kaur w/o Sohan Lal, resident of Mehtiana, Village Punni Mazara. Out of this land, consisting of Khewat No.104/106, Khatauni No.146, land measuring 11 kanals 5 marlas had been purchased from Mohinder Singh, Amarjit Singh sons of Bujha Singh, Surjit Singh son Surinder Singh, residents of Punnu Mazara. This land is a joint holding, due to which, a case pertaining to dispute of this land is pending in the Court of Divisional Commissioner, Rupnagar. The police has prepared Calendra under Section 145 CrPC with regard to the dispute of this land. Presently, no party is cultivating this land and the land has remained vacant for a long time. One of the co-sharers of the joint holding of this land Arvinder Kaur d/o Santokh Singh, Caste Jat, resident of Punnu Mazara along with petitioners Kulwant Singh and Sarup Singh, who are residing at Village Punnu Mazara in the house of Arvinder Kaur with an intention to take possession over the land in dispute brought some persons from outside and started cultivating this land with their tractor. Three more persons also came from outside, who were armed with dangerous weapons like rifles, pistols and kirpans and are cultivating the land with an intention to take possession of the same.

Learned counsel for the petitioners has argued that apart from the fact that the allegations in the FIR are false, it has been alleged in the FIR that brothers of the complainant namely Resham Lal, Des Raj and Major Singh sons of Chain Ram, his sisters-in-law (Bhabhi) namely Surinder Kaur wife of Resham Lal, Sita wife of Des Raj and his own relative Gurbaksh Kaur had purchased about 11 kanals 5 marlas of land out

of Khewat No.104/106, Khatauni No.146 from Mohinder Singh, Amarjit Singh sons of Bujha Singh, Surjit Singh son of Surinder Singh. The land in dispute is a joint holding, in which, Arvinder Kaur @ Ravinder kaur petitioner no.1 is one of the co-sharers and the alleged vendors namely Mohinder Singh etc. had filed an application for partition. Even the Patwari Halqa had specifically stated that the alleged place of occurrence i.e. Khasra No.8/20/2 measuring 1 kanal 17 marla is a joint land and the Khasra/Girdawaris are in the name of Arvinder Kaur @ Ravinder kaur, petitioner no.1. The petitioner no.1 being the co-sharer, no offence under Sections 447 IPC is made out and thus, the very FIR has been filed on behalf of the complainant to give it the colour of a criminal offence, which is purely civil in nature. He further submits the very allegations in the FIR are doubtful for the reason that initially, the offence under Section 25 Arms Act was registered, but the police found the said fact wrong and has not filed challan under the Arms Act. Therefore, no *prima facie* case is made out against the petitioners and the allegations made in the FIR are so absurd and inherently improbable, for which, no cognizance can be taken. He further submits that the allegations made in the FIR do not *prima facie* disclose the commission of an offence by the petitioners in any manner and continuation of proceedings against the petitioners is nothing but a total misuse of the process of law. Once the petitioner no.1 is one of the co-owners in the joint property in dispute, offence under Section 447 IPC is not attracted. Moreover, the partition proceedings are pending between the parties before this Court in CWP-5087-2017 *Sohan Singh & ors. Vs. State of Punjab & ors.* He has also relied upon khasra girdawaris for the

years 2013-14 and 2014-15 (Annexure P-8) and submits that petitioner no.1 Arvinder Kaur @ Ravinder Kaur is in possession. In support of his case, he has relied upon judgments of this Court in the cases of **Karamjit Kaur Singh Vs. State of Punjab & others 2014(7) RCR (Criminal) 1201, Rai Singh & Ors. Vs. State of Haryana & anr. 2013(5) RCR (Criminal) 822, Sadhu Singh & ors. Vs. State of Punjab & anr. 2011(3) RCR (Criminal) 263** and **Gurmeet Singh Vs. Rachhpal Singh 2004(2) RCR (Criminal) 72.**

On the other hand, learned State counsel, on instructions from ASI Shamsheer Bahadur, submits that though offence under Sections 511 IPC and 25 Arms Act were deleted during the investigation, but the challan was presented against the petitioner under Sections 447/148/149 IPC. Merely because petitioner no.1 is a co-owner in the property in dispute, does not permit the petitioners to take law in their hands. The land in dispute is a vacant land and the petitioners are not in possession thereof.

I have heard learned counsel for the parties.

It is not in dispute that partition proceedings are pending between the parties and one of the co-sharers has filed a writ petition i.e. CWP-5087-2017 *Sohan Singh & ors. Vs. State of Punjab & ors.* before this Court against the mode of partition so suggested by the local authorities. No such material has been brought to the notice of this Court by the respondent-State which may suggest that petitioner no.1 is not a co-sharer of the land in dispute. Rather, the averments made in this petition have remained unrebutted, as despite having been served in the case, respondent no.2 has not opted to come forward to oppose this petition.

Even otherwise, proceedings under Section 145 CrPC are pending before Additional Chief Judicial Magistrate, Nawanshahr. Therefore, this Court finds that since petitioner no.1 is a co-sharer in the property in dispute, no offence is made out against her so far as offence under Section 447 IPC is concerned. Thus, in view of law laid down by Hon'ble the Apex Court in the case of **State of Haryana Vs. Bhajan Lal 1992 Supp(1) SCC 335**, this Court while exercising its inherent powers under Section 482 CrPC can quash the FIR in question. The observations so made by Hon'ble the Apex Court in the case of **Bhajan Lal** (*supra*) read as under:-

“..The following categories of cases can be stated by way of illustration wherein the extraordinary power under Section 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

Therefore, the facts narrated above are sufficient to show that the present proceedings have been instituted maliciously with an ulterior motive for mounting unnecessary pressure upon the petitioners, particularly when proceedings under Section 145 CrPC are already pending between

the parties and the averments made in this petition have remained un rebutted by the complainant.

Accordingly, the present petition is allowed and FIR No.80 dated 17.05.2015 (Annexure P-1) under Section 447/511/148/149 IPC and Section 25 Arms Act, registered at Police Station City SBS Nagar, District SBS Nagar as well as report under Section 173 CrPC (Annexure P-2) filed in the Court of ACJM, SBS Nagar under Section 447/148/149 IPC and all consequential proceedings arising therefrom are quashed *qua* the petitioners.

September 26, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No