

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17445-2014 (O&M)

Date of decision: 08.02.2018

Shingara Singh and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sunny Singla, Advocate
for the petitioners.

Mr. Atinder Pal Singh Jaurkian, AAG, Punjab.

Mr. Gaurav Gupta, Advocate for
Mr. G.N. Malik, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.25 dated 23.03.2014 under Sections 379, 427, 148 of the Indian Penal Code (for short 'IPC'), registered at Police Station Ahmadgarh, District Sangrur.

Initially, the petition was filed on behalf of all the three petitioners namely Shingara Singh, Akashdeep Singh and Kuldeep Kaur, however, later on Akashdeep Singh was declared a juvenile and he has faced a separate trial. Counsel for the petitioners had withdrawn the present petition qua petitioner No.2 Akashdeep Singh on 04.10.2016.

Learned counsel for the petitioners submits that the FIR was registered on the pretext that on 05.06.2013, a panchayati compromise was effected between the parties, in which it was mutually decided that the share of

the complainant's land, which come in the house of Shingara Singh-petitioner No.1, was given in lieu of that part of land of Shingara Singh, which was agricultural field and the gate, which Shingara Singh, had opened towards the side of his house, would be closed by 06.06.2013. Counsel for the petitioners further submits that later on the complainant had constructed a wall closing this gate, but on 22/23-03.2014 at about 11.30 PM, his neighbour Shingara Singh i.e. the petitioner, his son Akashdeep (the juvenile) and his wife Kuldeep Kaur along with 7/8 other persons had demolished the wall and stolen the bricks and had plucked the plants and opened the gate again.

Counsel for the petitioners has further submitted that in fact, it is a civil dispute, which has been given a colour of criminal litigation, as a suit for permanent injunction dated 18.03.2014 filed by the petitioners against the respondent-complainant Nirbhai Singh as well as Gram Panchayat is still pending. Counsel for the petitioners has relied upon the site plan (Annexure P-3), which was attached to the civil suit, to show that the disputed gate is the only entry to the house of the petitioners and this fact is also pleaded in the civil suit. Vide order dated 19.03.2014, Civil Court has directed the parties to maintain status quo, while deciding an application under Order 39 Rules 1 & 2 CPC and the said order is still operative, as the suit has not been decided so far. It is further submitted that on the face of it, the allegations levelled in the FIR do not constitute any offence, as admittedly the petitioners and complainant are first cousins and the dispute is with regard to opening of a gate over the land, which is within the abadi of the village and is gair mumkin land. It is also submitted that the FIR has been lodged only on the premise that the petitioners have undertaken to close the door in lieu of some land given by the complainant, however, nothing has come on record to prove the said fact and

the land underneath the path towards which the disputed gate opens, being gair mumkin abadi land, is not owned by respondent No.2 Nirbhai Singh-complainant.

It is further submitted that subsequent to submission of the report under Section 173 Cr.P.C. on 11.06.2014, no substantive proceedings have been undertaken by the trial Court and even the charges have not been framed so far. Counsel for the petitioners has further submitted that vide judgment dated 14.08.2015, Principal Magistrate, Juvenile Justice Board, Sangrur, while deciding the trial of juvenile Akashdeep Singh, has also recorded a finding that the prosecution has failed to prove its case from the statement of PW1 Nirbhai Singh-complainant (respondent No.2 herein) that any offence was committed. The operative part of the judgment of acquittal of Akashdeep Singh dated 14.08.2015 is reproduced as under: -

“After hearing the learned APP for the State and learned defence counsel and after going through the case file meticulously, this Board is of the considered opinion that the prosecution has miserably failed to prove the guilty of the juvenile beyond shadow of all reasonable doubts. The story of the prosecution is that juvenile stolen the bricks, disappeared the bricks and also caused loss to the complainant Nirbhai Singh but from perusal of the cross-examination of PW1-Nirbhai Singh, he has stated that his house was constructed in the year 1974 and the house of Shingara Singh who is the father of juvenile is also constructed in the same year. He has further stated that from 1974 to 2013, two times demarcation was conducted. But in the light of day, no demarcation is on the judicial file. He has further stated that the

gate of Shingara Singh is at the distance of 20-25 yards from the property in dispute. He has further stated that the gate of Shingara Singh is situated opposite side from the disputed gate. He has also stated that one compromise was effected. The copy of the same was handed over to the police. But demarcation of the witness has drawn towards the judicial file but there is no such compromise application on the file. No photographs were clicked at the spot and no site plan was prepared. He has further stated that when Shingara Singh installed the gate at that time he was out of country. When he was out of country then how he can said that the said gate was installed by Shingara Singh. Further more, he has stated that after coming in India, he had not filed any application regarding it. He has also admitted that there is no passage except the disputed gate. He has also brought on record jamabandi for the year 2013-14. There is recital in the jamabandi Ex.R1 that there is gair mumkin chah. He has further admitted the photographs Mark A to Mark B. He has also admitted that in the photograph Mark A, the passage is shown in the front of the gate which is disputed gate. The back side building which is shown that belongs to Shingara Singh. He has also admitted that adjoining the disputed gate, the other gate is relating to Dilbag Singh. From perusal of cross-examination of PW2-Karamjit Kaur, she has stated that the house of Shingara Singh was constructed prior to her marriage and the house of Dilbag Singh was also constructed 25-26 years ago. She has also admitted the photographs Mark A and Mark B which relates to disputed gate of Shingara Singh. She

has also admitted that in front of the house of Shingara Singh, the passage is visible. She has also admitted that Dilbag Singh, Shingara Singh and they also used the said passage. So, from the evidence adduced by the prosecution, the prosecution has failed to prove this fact that in the intervening night of 22/23.03.2014 at about 11.30 PM, juvenile and his co-accused who are major and challaned separately stolen bricks which belongs to Nirbhai Singh, also disappear the bricks and caused loss to the complainant Nirbhai Singh. It is settled proposition of law that where there is doubt in the version of the prosecution, benefit of doubt must be given to the juvenile. As such, the point as set up for determination as mentioned above is resolved in favour of the juvenile and against the prosecution and the juvenile is hereby acquitted from the notice served against him by giving him benefit of doubt. His bail bonds and surety bonds are discharge. File be consigned to the record room.”

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division, Amargarh has been filed and in this reply, it is nowhere stated that the land, towards which the disputed gate of the petitioner opens, is exclusive ownership of respondent No.2-complainant. However in reply, it is submitted that due to embezzlement of bricks, offence under Section 201 read with Section 34 IPC was added.

Separate reply on behalf of respondent No.2 has been filed, in which the allegations levelled in the FIR have been reiterated. However, the fact pleaded in para 7 of the petition that the disputed gate of the petitioners' house is only passage for the ingress and egress, has not been denied in the

corresponding para 7 of the reply filed by respondent No.2.

After hearing counsel for the parties and perusal of the FIR itself, I find merit in the present petition.

The petitioners and respondent No.2 are first cousins and they have their house situated on the abadi land of village Nathu Majra. Admittedly, a suit for permanent injunction is pending between the parties regarding the main gate of house of petitioners, shown as EF in the site plan, which is attached as Annexure P-3 with this petition and the Civil Court is seized of the matter. A perusal of the reply filed by DSP, Sub Division, Amargarh as well as respondent No.2 also shows that there is no specific denial that the disputed gate is the only entry to the house of the petitioners.

It is also worth noticing here that while acquitting the co-accused Akashdeep Singh (the juvenile), the Principal Magistrate, Juvenile Justice Board, on appreciation of the statement of respondent No.2-complainant, who appeared as PW1, has recorded a finding that he has admitted that his house was constructed in the year 1974 and the petitioner Shingara Singh who is father of Akashdeep Singh, also constructed his house in the same year and therefore, the disputed passage being the only entry to the house of the petitioners is admitted to be in existence since the year 1974.

The Apex Court in the case of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) Supreme Court Cases 335**, has held that 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 or make out a case against the accused, the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court to prevent abuse of the process of any Court or otherwise to secure

the ends of justice.

This Court in **Jaswinder Singh Vs. State of Punjab, 2013 (1) RCR (Crl.) 310** has held that it would be a futile exercise to continue the proceedings against the other accused persons when co-accused stand acquitted on the basis of same set of allegations. Similar view has been taken in **Vinod Kumar Vs. State of Punjab, 2011 (2) RCR (Crl.) 438**.

In view of the above, on a bare perusal of the impugned FIR (Annexure P-1), the reply filed by the Investigating Officer and the complainant, wherein it is not denied that the petitioners have no passage except the disputed one, qua which the FIR was registered and in view of the judgment of acquittal passed by the Court against one of the accused holding that the complainant has failed to prove its case, I find that the impugned FIR do not disclose commission of offence or make out a case against the accused persons. Therefore, this petition is allowed and FIR No.25 dated 23.03.2014 under Sections 379, 427, 148 IPC, registered at Police Station Ahmadgarh, District Sangrur and all the subsequent proceedings arising therefrom are hereby quashed against the petitioners.

[ARVIND SINGH SANGWAN]
JUDGE

08.02.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No