

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

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**CRM-M- 3676-2016 (O&M)
Decided on: 12.09.2018**

Sukhwinder Singh Sandhu

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Vishal Deep Goyal, Advocate
for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Jasdeep Singh Gill, Advocate
for respondent No.2-complainant.

Rajbir Sehrawat, J. (Oral)

The present petition has been filed for quashing of the FIR No.104 dated 30.10.2013 under Sections 419, 420, 465, 466, 471, 120-B of the Indian Penal Code (for short 'IPC') (Section 467 added later on), registered at Police Station Qila Lal Singh.

The allegations in the FIR are given as under:-

“That I Varinderpal Singh (NRI) son of S. Raghbir Singh of U.S.A. That I am cultivating the land measuring 55 Kanals 5 Marlas situated at Village Ahmadabad, Tehsil Batala, District Gurdaspur, Hadbast No.238 since 1982. Earlier I was cultivating and thereafter in the year 1992, I left for U.S.A. and the same was being cultivating through my xxxxx namely Sulakhan Singh son of S. Kartar Singh resident of village Gillan Wali, Tehsil Batala, District Gurdaspur, Sukhwinder Singh and Amandeep Singh

both sons of S. Harjeet Singh both residents of village Dalla, Tehsil Batala, District Gurdaspur till date. Revenue record regarding the same is attached. That my uncle Sukhwinder Singh above mentioned accused got entered his name in the column No.4 of khasra girdawari and got deleted my name from the revenue record and in this regard rapat No. 285 dated 25/03/2010 has been made by the concerned patwari Dalbir Singh in connivance with Sukhwinder Singh which is also attested by Sukhwinder Singh accused and numberdar of the village Gokhuwal, Tehsil Batala, District Gurdaspur. The said entry bears my forged signatures. That it is pertinent to mention over here that on 25.03.2010 I was in USA on which date the said entry was propounded by the accused Sukhwinder Singh in connivance with the concerned revenue officials by impersonating some other person as myself and as such, the accused Sukhwinder Singh has played fraud with me in connivance with revenue officials with an oblique motive to grab my property and to cause wrongful loss to me and to get undue benefits. That after creating the said entry and with intention to grab the property and harvest the wheat crops; the accused filed a civil suit for permanent injunction against me. In the said suit Hon'ble Court granted status quo order in favour of accused. In the light of abovesaid status quo order the accused; in connivance with the local police officials, harvested the wheat crops and his intention is very much clear to dispossess me from the land by illegal means and he threatened to kill me if I proceed further against him. It is, therefore, respectfully prayed that in the light of above stated facts a criminal case be registered against the abovesaid accused under the relevant provisions of law in the interest of justice and equity. Sd/- Varinderpal Singh abovesaid.

Conclusion report of the inquiry of the complaint done by DSP/D Batala:- During inquiry it is found that Sukhwinder Singh Nambardar in connivance with Chowkidar Harbans Singh by impersonating somebody in place of his

nephew Varinderpal Singh and by verifying his identity as Varinderpal Singh and by keeping influence over Patwari Dalbir Singh, got forged signatures of Varinderpal Singh in his roznamcha and Chowkidar Harbans Singh put his thumb impression. Thus, Sukhwinder Singh got transferred the girdawaris of village Ahmadabad, which is in the name of Varinderpal Singh, in favour of his brother Surinder Singh, who is father of Varinder Singh. As girdawaris are in the name of Surinder Singh, Nambardar Sukhwinder Singh got stay order by giving detail of the land as joint holding with Surender Singh and he got benefit of it. Therefore, it is recommended to take legal action against Sukhwinder Singh Nambardar and Chowkidar Harbans Singh alias Bhai Manna, residents of Gokhuwal and fake person, who impersonated Varinderpal Singh after taking opinion from ADA(L) Batala. Sd/- Hari Sharan Sharma, Deputy Superintendent of Police (D) Batala. ADA/L to discas. Sd/- SSP Batala 02.10.2013. Sir from the perusal of findings of enquiry report I am of the opinion that a prima facie case under Sections 419, 420, 465, 471 read with Section 120-B of IPC is made out against indicated persons. Sd/- ADA/L BTL 30.10.2013 W/SSP Pls. SHO, Q Lal Singh to register the case & investigation. Sd/- SSP Batala dated 30.10.2013. Today at police station: at this time, after receiving abovesaid complaint No. 104-13 and inquiry report in the police station through post, abovesaid case has been registered. Original complaint alongwith inquiry report total page 81 alongwith copy of FIR are handed over to ASI Balraj Singh for investigation. Control room be informed through wireless. Complete rapat No.28 at 7.10 p.m.”

Learned counsel for the petitioner has argued that the petitioner has not put his signatures anywhere in the proceedings whereby the Khasra Girdawari was changed from the name of the complainant to the name of the father of the complainant. It is further contended that the documents

show that the signatures in the said proceedings, which are alleged to be the signatures of the present petitioner, are in Punjabi, whereas, the petitioner has never put signature in Punjabi. He puts his signature only in english language. Counsel has further argued that there is no reason or occasion for the petitioner to be involved in the process of change of khasra girdawari; or for the purpose of identification of the person who has impersonated the complainant in the proceeding, because the petitioner is the 'Numberdar' of village Gokhuwal whereas the land, regarding which the present proceedings have been initiated, is situated at village Ahmedabad. It is further contended by the counsel that, otherwise also the petitioner could not have drawn any benefit out of the change of khasra girdawari from the name of the complainant to the name of his father. It is further contended that during the pendency of the proceedings before this Court, the sample signatures of the petitioner were ordered to be taken by Investigating Officer and were sent to FSL for comparison with the disputed signatures. However, the FSL has not given any definite opinion. Therefore, the sample signatures and disputed signatures have, once again, been sent to the FSL for comparison. However, the report of the FSL has not come so far. It is further contended by the counsel that after the Khasra Girdawari was changed in the name of the father of the complainant, some settlement had taken place between the complainant and his father. According to that settlement, the land in dispute has finally been transferred in the name of wife of the complainant, who has got registered sale deed in her favour. Therefore, it is contended that cause of action also does not survive. Hence, it is argued that the FIR should be quashed, being misuse of the process of the Court.

On the other hand, learned counsel for the complainant has submitted that the possession of the land in question, was handed over to him by his grandfather directly, bye-passing his father and his uncle, who is the present petitioner, in the year 1988. Since then, the khasra Girdawaris were continuing in the name of the complainant only. Although, the complainant had gone to USA in the year 1992, however, he used to visit India frequently to ensure that his land is cultivated in his direct supervision. But taking advantage of the temporary absence of the complainant, the petitioner managed this change of name in Khasra Girdawari; from the complainant to the name of the father of the complainant; in the year 2010. To rebut the arguments of learned counsel for the petitioner; that the petitioner has not got any benefit out of this change of Khasra Girdawari, learned counsel for the complainant has pointed out that this change was got affected by the present petitioner with a specific motive. It is pointed out by him that the design adopted by the petitioner behind this change of khasra girdawari was; to show himself as cultivating co-sharer in the land in question, so that he could create a legal status as a co-sharer in lawful possession of the land in question. It is contended by the counsel that; this fact is made evident by the subsequent conduct of the petitioner; in filing a suit for perpetual injunction, wherein, he had claimed the same fact that he is a cultivating co-sharer in the land in question, therefore, the injunction be granted in his favour. Although initially the injunction was granted in favour of the petitioner and he drew benefit of that injunction, however, ultimately; the suit of the present petitioner was dismissed by the Civil Court on 09.05.2017. Therefore, it is contended by the counsel; that the argument of the petitioner that he did not

draw any benefit out of this change of Khasra Girdawari, is not sustainable.

Counsel for the complainant has further argued that even if the petitioner has not drawn any benefit, he has participated in the process of fraudulent change of entries in the record. The process of fraud stood completed the day khasra girdawari was changed. There are specific allegations contained in the FIR; against the petitioner that he was an active participant in the process of change of khasra girdawari. It has also come during the investigation that the person, who impersonated the complainant was none other than the son of the present petitioner, named, Ramneek Singh. After having impersonated the complainant in the abovesaid proceedings, the son of the petitioner has also gone abroad. It is further contended that the prosecuting agency has collected sufficient evidence to establish the culpability of the petitioner in the present crime. There are statements of the witnesses, who have stated that it is the present petitioner, who engineered the entire process, and it is the son of the petitioner; who impersonated the complainant in the said proceedings. Still further, the active interest and participation of the petitioner in the crime is established also by the subsequent conduct of the petitioner, because after the son of the petitioner had gone abroad and the trial Court had issued non-bailable warrants against the son of the petitioner, it is the petitioner who has challenged the warrants of arrest issued against his son. Although in normal course, the petitioner should not have been concerned with the non-bailable warrants issued against his son, however, he had moved an application before the trial Court for withdrawal of the warrants of arrest issued against his son. It is further submitted that even that application has been dismissed by the trial Court.

Learned State counsel, being instructed by ASI Vijay Pal Singh, has submitted that since the earlier FSL report had not given a clear cut opinion regarding the signatures of the petitioner, and the FSL had demanded more signatures, therefore, the signatures have again been sent to the FSL for comparison. On a specific query as to what has happened to the person who actually impersonated the complainant, the learned State counsel points out that the investigating agency has not filed challan against him. He was kept in column No.2 as his name was not mentioned in the FIR. However, afterwards the trial Court has issued non-bailable warrants against the son of the petitioner on this count. Counsel further submits that otherwise, there is sufficient material against the present petitioner in the form of witnesses which shows that the petitioner identified the impersonator and that the impersonator is the son of the petitioner. Accordingly, challan has been filed against the present petitioner. Charge in this case was not framed because the proceedings were stayed by this Court on 23.03.2016, and thereafter, the interim order is continuing as such.

The Hon'ble Supreme Court has amply clarified the criteria for quashing of the FIR in a number of judgments. The gist of the law laid down by the Hon'ble Supreme Court is that if the FIR, on its bare perusal, discloses the offences against the accused, then normally, the FIR is not to be quashed. Although in a rare case where the FIR is shown to be otherwise malafide and misuse of the process of the Court, the High Court can intervene to save an innocent person from being unnecessarily harassed, despite the fact that the FIR might be disclosing ingredients of some offence.

Having heard learned counsel for the parties and perusing the

record, this Court is of considered opinion that the arguments raised by the counsel for the petitioner are not sustainable. There are specific allegations against the petitioner that he is the person, who has engineered the entire process of change of khasra girdawari; through impersonation of the complainant. The allegations as contained in the FIR are duly supported by the evidence collected by the Investigating Officer during the process of investigation. There is positive evidence against the petitioner in the form of statement of Patwari, who was part of the process of the change of the khasra girdawaris. Therefore, it cannot be said that the ingredients of the offences against the petitioner are not either disclosed in the FIR or made out from the evidence collected during the investigation.

The argument of the learned counsel for the petitioner that the present proceedings are misuse of the process of the Court, is also liable to be noted only to be rejected. The argument of the counsel that the petitioner has not drawn any benefit out of change of khasra girdawari, is found to be not factually correct; because on the basis of change of khasra girdawari he filed a suit for injunction claiming himself to be a cultivating co-sharer. At the initial stage, he was granted injunction as well, although, ultimately the suit was dismissed.

This Court find substance in the argument of the learned counsel for the complainant that; being the Numberdar of the Village Gokhuwal; where the complainant is also residing, he could have identified the complainant in any proceedings. Therefore, taking advantage of this fact, the petitioner fraudulently identified the impersonator as the complainant. Hence the argument of learned counsel for the petitioner that since the petitioner is not the Numberdar of the village Gokhuwal where the

land is situated, and therefore, he has no reason or occasion to enter into identification, is without any substance.

Although, counsel for the petitioner has taken recourse to the provisions of Punjab Land Revenue Manual, Chapter IX, with regard to the procedure for change of khasra girdawari, to contend that it is only the Numberdar of the village, where the land is situated, who could have identified the person from whose name the khasra girdawari is being changed to the name of some body else, however, this is not the sufficient reason for the petitioner to claim that he was not actually present at the time of change of khasra girdawari; to identify any person in the entire process. As observed above, since the positive statements have come on record to show the actual presence of the present petitioner at the time of carrying out of correction of the khasra girdawari, therefore, he cannot avoid his criminal liability, only by arguing that he is not the Numberdar of the village Gokhuwal, who could have identified the complainant as per provisions of the Punjab Land Revenue Manual.

It has also come on record by way of affidavit of Sh.Kuljeet Singh, Assistant Inspector General of Police, NRI and Women Wings, Amritsar, dated 16.05.2018, which is filed in response to query from the Court- as to who could have identified the complainant in those proceedings, that as per Tehsildar of the area, it is only the Numberdar of the Village Gokhuwal where the complainant was residing, who could have identified the complainant in those proceedings and not the Numberdar of Village Ahmedabad.

Although the counsel for the petitioner has argued that, subsequently, the land in question has been transferred by the father of the

complainant; in the name of the wife of the complainant, therefore, the cause of action ceases to exist, however, this contention is legally not sustainable. The allegation against the petitioner is regarding the participation in the fraudulent process of change of entries and identification of the impersonator. The offence stood completed; the day the change of khasra girdawari was got made through that process. Learned counsel for the complainant, is justified in making an argument that merely because the land is subsequently transferred in the name of the wife of the complainant, is no ground for the petitioner to absolve him of his criminal liability.

In view of the above, this Court does not find any grounds sufficient to quash the present FIR. Therefore, the present petition is dismissed.

However, it is clarified that it would not be taken an expression on merits of the case during the process of trial. The trial Court shall assess the entire material independently.

12.09.2018

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**[RAJBIR SEHRAWAT]
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>