

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45479-2016 (O&M)

Date of Decision: 11.07.2018

Chotta Singh

...Petitioner

vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Saurabh Kaushik, Advocate
for the petitioner.

Ms. Gumkirat Kaur, AAG, Punjab.

ARVIND SINGH SANGWAN,J. (Oral):

CRM-23009-2018

For the reasons stated in the application, the same is allowed.

Annexure P4 is taken on record.

CRM-M-45479-2016

Prayer in this petition is for quashing of FIR No. 77 dated 31.07.2016 under Section 420 of IPC registered at Police Station Sadar Nabha, District Patiala and all other consequential proceedings arising therefrom.

Brief facts as narrated in the FIR, which is registered at the instance of one Jaspal Singh son of Babu Singh, are that petitioner Chhota Singh, in connivance with the officials of Electricity Board Nabha, has got installed a tube well in the fields of some other persons, due to which, financial loss has been caused to the Electricity Board. It is further alleged in the FIR that the petitioner has submitted all the documents alongwith

estimate (map) for installation of the tube well and Account No. A.P.36-333 was allotted and against this account, a tubewell has been installed in the land of other persons and thus accused persons have mis-used their position and caused financial loss to the Electricity Board and have also committed fraud.

Counsel for the petitioner submits that as per jamabandhi (Annexure P4), the petitioner is a co-sharer in the land comprised in khewat No. 85 Khatouni No. 95, khasra Nos. 17/10 (0-4), 18/13 (8-0), 18 (8-0), 19/1 (4-0), 22 (8-0), 23 (8-0), 24 (2-12), 19/24 (8-0), 25/1 (5-12), 26/3 (7-0), 8 (6-12), 27/2 (8-0), 3 (7-2), 4 (0-2), 8 (3-18) and 9 (8-0), kitte 17 (101-2) situated in village Diwangarh in District Patiala. He further submits that the petitioner had applied for tube well connection in the year 1995 and on its maturity, the same was got installed in the year 2013, in the land against which he had applied for the same. Counsel further submits that this FIR has been registered by the complainant with a mala fide motive as father of the complainant-Babu Singh has filed a suit No. 289 dated 01.09.2010 against the petitioner as well as 36 other co-sharers, praying for a decree of declaration that the plaintiffs have become owner in possession of one khasra No. 67 out of the aforesaid land. It is further submitted that the trial Court, after holding that suit for declaration based on adverse possession is not maintainable in view of the judgment rendered in **P.T.Munichikkanna Reddy vs. Rrevamma, 2007 (2) RCR (Civil) 847** and dismissed the suit vide judgment and decree dated 03.03.2016, whereafter, the present FIR has been registered as a counter blast to the same, though complainant-Jaspal Singh is not recorded as a owner of the land in dispute and cannot be termed as a victim or complainant. Counsel further submits that none of the co-

sharer, who have been recorded as owners in the land in question, have raised any objection with regard to the installation of the tube well and have no grievance against the same and rather one Jarnail Singh son of Ishar Singh, a co-sharer, has sworn his affidavit on 26.08.2016 (Annexure P2) that the petitioner has got tube well installed over the land in dispute as he has applied for connection in the year 1995-96 when the petitioner and said Jarnail Singh were having joint/common khewat and the present FIR has been registered on false pretext.

Reply, by way of affidavit of DSP, Circle Nabha has already been filed and as per the reply, the report from the Circle Patwari dated 04.04.2016 was taken, according to which the tube well connection has been installed in khasra No. 18/13/2 (7-19) and as as per jamabandhi of the year 2010-2011, the petitioner is not the owner of the same. The report of the Patwari is based on the jamabandhi for the year 2010-2011, vide which Hans Singh, Gurnam Singh, Daulat Singh are shown to be co-owners and Gurnam Singh son of Chatra Ram be also shown in the cultivation of land.

Learned State counsel, on instructions from SI Mohar Singh, submits that the case is still at the investigation stage, though FIR pertains to the year 2016.

In reply, counsel for the petitioner submits that in the initial investigation conducted by the police before registration of FIR, no negligence on the part of the employees of the Punjab State Electricity Board i.e. SD/JE was found and the FIR was registered only against the petitioner with the allegation that he has installed the tube well on the land of some other persons and has committed the offence of cheating with the employees of Electricity Board. It is further submitted that even no

complaint is filed by the Electricity Board against the petitioner at any stage in this regard.

After hearing learned counsel for the parties, I find merit in the present petition for following reasons:-

a) Admittedly, complainant-Jaspal Singh is neither the owner of the disputed khasra number where the tube well has been installed nor in possession of the same and, therefore, he is not a victim;

b) Even as per the investigation conducted by the police, no offence is made out against the official of Electricity Board;

c) It is also apparent on record that father of complainant i.e. Babu Singh has filed a suit for declaration against the petitioner and 36 other co-sharers with regard to khasra No. 67 claiming that he has become owner in possession of the said khasra number by adverse possession and the said suit was dismissed as not maintainable, vide judgment and decree dated 03.3.2016;

d) It is also apparent on record that except for the complainant-Jaspal Singh, none of the co-sharers, who are recorded for the jamabandhi for the year 1995-96, or in the jamabandhi for the year 2010-2011, has come forward to raise the grievance against the petitioner that he has installed tubewell at a wrong place or in some other land belonging to some other person;

e) Even no complaint is filed by the Electricity Board that the petitioner has committed any fraud or caused loss to the Board.

From a conjoint reading of the complaint, FIR, affidavit of DSP as well as from the investigation conducted so far, it is apparent that ingredients of Section 420 IPC, vis-a-vis causing any loss to the Electricity

Board or committing a fraud with the Electricity Department are not attracted and, therefore, in the light of the judgment of Hon'ble Supreme Court of India in *State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) R.C.R. (Criminal), 383*, no offence is made out against the petitioner.

In view of the above, FIR No. 77 dated 31.07.2016 under Section 420 of IPC registered at Police Station Sadar Nabha, District Patiala and all other consequential proceedings arising therefrom are, hereby, quashed.

11.07.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether Reportable : Yes/No