

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

CRM-M-6174-2018 (O&M)

Date of Decision:-3.8.2018

Kewal Kaur and others

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kehar Singh Hissowal, Advocate for the petitioners.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioners seek quashing of FIR No.03 dated 28.2.2017 registered under Sections 380, 506 and 34 of Indian Penal Code, 1860 (Sections 199 and 200 IPC were added later on) at Police Station NRI, Hoshiarpur, District Hoshiarpur.

The FIR in question was lodged at the instance of Jaspreet Singh, wherein it has been alleged that he alongwith Sukhdev Singh are permanent residents of Canada and that they own land measuring 18 acres as well as a house situated in village Kharaabal Bassi, Tehsil Garshankar, District Hoshiarpur and are in possession of the said property which had been inherited by them from one Nasib Singh. It is alleged that the accused have, however, broken the lock of the house and taken away valuables from the said house and had also got installed an electric connection in their name without their consent.

The learned counsel for the petitioners has submitted that in fact they are the owners of the house in question and that civil litigation in

respect of the same is pending, wherein order of *status qua* regarding possession has been passed.

Having heard the learned counsel for the petitioners and having perused the FIR in question, I find that the allegations levelled herein *prima facie* disclose commission of cognizable offences. It is well settled that once the contents of FIR disclose ingredients of an offence, the same cannot be quashed in exercise of its inherent powers.

Hon'ble the Supreme Court in State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335 enumerated the categories of cases where inherent powers under Section 482 Cr.P.C. could be exercised for quashing of FIR as follows:-

- “(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 FIR 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 FIR 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.”

It was further held therein as follows:-

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

In another recent case Dineshbhai Chandubhai Patel Vs. State of Gujarat, (2018) 3 SCC 104 the Hon'ble Supreme Court held as follows:-

“29. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was

required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

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31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.”

Finding that allegations *prima facie* disclose commission of cognizable offences, it can not be opined at this stage that allegations are false or not well founded. Finding no merit in this petition, the same is hereby dismissed.

However, the petitioners would be at liberty to raise all the points taken herein before the learned trial Court at the stage of framing of charges.

3.8.2018

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No