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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 454/2016 & CrI.M.A.No.2467/2016

CHARAN SINGH & ORS

..... Petitioners

Through Mr. S.C. Singhal and Mr. Pradeep
Verma, Advs.

versus

STATE & ORS

..... Respondents

Through Ms. Richa Kapur, ASC with Mr.
Ashish Negi, Adv for the State along
with SI Amrender.
Mr. Saurabh Malhotra and Mr. Yatin
Chadha, Advs for R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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08.01.2018

This petition seeks a quashing of FIR No.827/2015 registered under Sections 425/427/441/447 of the IPC a Police Station Fateh Puri. This FIR had been registered on a complaint filed by the complainant under Section 156 (3) of the Cr.PC pursuant to which the Court had directed registration of the FIR.

In the present petition, learned counsel for the petitioner submits that since the parties have already been relegated to a civil suit and the petitioner has filed a suit for permanent injunction against the complainant in which an order on an application under Order XXXIX Rules 1 & 2 of the Code is enuring in favour of the present petitioner, the settled possession of the petitioners stands admitted and in this view of the matter, investigation in the present FIR would

serve no purpose as a civil remedy has already been availed of inter-se the parties. This is the prime submission of the learned counsel for the petitioner.

The State has filed a status report. In this status report, it has been stated that the fact that a civil suit was pending inter-se the parties had not been disclosed by the complainant in his application under Section 156 (3) of the Cr.PC.

This factum is disputed by the complainant.

A perusal of the application filed by the complainant under Section 156 (3) of the Cr.PC reflects that the complainant had clearly stated that a civil suit is pending inter-se the parties. The application under Section 156 (3) of the Cr.PC further states that the petitioner had committed a criminal trespass into the agricultural land belonging to the complainant which land also stands mutated in the name of the complainant. The fact that mutation of this land is in the name of the complainant has really not been disputed by the petitioner. His submission is that all along, he is in settled possession of the land.

Learned Metropolitan Magistrate after perusing the complaint of the complainant had directed the concerned SHO to register the aforementioned FIR; the Court was of the view that it is difficult for the complainant to identify or find the person who had allegedly committed a criminal trespass into the agricultural land alleged to be in his possession.

The prayer made by the petitioner seeking quashing of the petition, at this stage, may not be possible. The suit for permanent

injunction filed by the petitioner would not decide the title of the suit; at best, it would only decide the possessory rights inter-se the parties. Moreover the order heavily relied upon by the petitioner dated 22.07.2009 (passed on the application under Order XXXIX Rules 1 & 2 of the Code in the civil suit) is only a prima-facie return of a finding; it is not the final order. The suit is yet to culminate.

At the cost of repetition, a civil suit for permanent injunction will not take care of the averments which have been registered in the present FIR which FIR is an FIR under Sections 425/427/441/447 of the IPC. A subsequent order passed in the aforementioned suit dated 27.09.2017 wherein on an application filed by the complainant, the plaintiff/petitioner were restrained from taking dumping sand/soil/stones/mud or material upon the suit property had also been placed on record. This Court is of the view that the civil suit cannot take care of the gist of the present FIR for which the Competent Court alone will be able to draw a conclusion as to whether there was any intent on the part of the petitioner to criminally trespass into the agricultural land of the complainant or not. The fact that this was a vacant plot of land is also not in dispute. The submission of the complainant all along being that he is the owner of the land and the fact that mutation is in his name also not being a matter which has really been disputed.

The Apex Court in JT 2009 (3) SC 314 Mahesh Chaudhary Vs. State of Rajasthan & Anr in this context has held as under:-

“It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.”

No case is made out for quashing of the present FIR.
Dismissed.

INDERMEET KAUR, J

JANUARY 08, 2018

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