

CRM-M-14782-2014 (O&M)

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

CRM-M-14782 of 2014 (O&M)

DECIDED ON: February 28, 2019

MOHINDER SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Krishan Singh Dadwal, Advocate, for the petitioner.
Mr. Kirat Singh Sidhu, DAG, Punjab.
None for respondent No.2.

SUDHIR MITTAL, J. (ORAL)

The petitioner is accused No.3 in Complaint No.168-A/1 of 2010, dated 19.08.2010 (Annexure P-3) titled as Raghbir Singh vs. Kuldeep Singh and others, filed under Sections 452, 347, 392, 504, 506, 120-B IPC. He has challenged the said complaint as well as summoning order dated 12.03.2013 (Annexure P-4), inter alia on the grounds set out in this quashing petition.

2. The complainant of the aforementioned complaint is respondent No.2 and his allegations therein are that accused Nos.1 to 4 are inimical towards him on account of political rivalry. On 30.07.2010 at about 11.30 a.m., the accused trespassed into his house and conducted an illegal search. The accused Nos.5 to 7 wrongfully confined the family members of the complainant in the courtyard of the house while accused Nos.1 to 4

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searched the house. The household articles were thrown on the floor and Rs.5,000/- each from the almirah, one pair of gold ear-rings, one gold chain and two gold rings were stolen. Thereafter, they all ran away after issuing threats. The police was approached but no action was taken by it and therefore, the complaint was filed.

3. It has been contended by learned counsel for the petitioner that one Subhash Chander son of Pheru Ram was working as Secretary of the Rail Majra, Cooperative Agricultural Service Society, Tehsil Balachaur, District SBS Nagar (for short 'Society') and had been suspended by the Administrator of the said Society vide order dated 26.07.2010 because he remained absent from the Society and did not complete its record. He was directed by the Assistant Registrar of the Society to handover the record of the Society but he failed to do so and thus, a request was made to the Sub-Divisional Magistrate, Balachaur to direct issuance of a search warrant under Section 28(2) of the Punjab Cooperative Societies Act, 1961, so that house of aforementioned Subhash Chander son of Pheru Ram could be searched and the record obtained. This is apparent from order dated 29.07.2010 passed by the Sub-Divisional Magistrate, Balachaur, a copy of which has been annexed as Annexure P-1. Thereafter, search was carried out on 30.07.2010 and an inventory was prepared which is Annexure P-2 on the record. The inventory was signed by residents of the village including the complainant-respondent No.2, the Sarpanch of the village, Inspectors of the aforementioned cooperative society and the police officials who executed the warrants yet, complaint dated 19.08.2010 (Annexure P-3) was filed in connivance with Subhash Chander son of Pheru Ram. No offence has been committed by the petitioner and the filing of the complaint and

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issuance of summoning order dated 12.03.2013 (Annexure P-4) amounts to a gross abuse and misuse of the process of the criminal Court and thus, they deserve to be quashed. The summoning order was challenged by way of a revision petition and vide order dated 24.03.2014 (Annexure P-6), same has been dismissed as having been rendered infructuous by mis-reading and mis-construing the facts of the case.

4. Reply has been filed on behalf of respondent No.1 (State of Punjab). A perusal thereof shows that averments regarding directions to the Station House Officer concerned to issue search warrants of the house of aforementioned Subhash Chander son of Pheru Ram, preparation of inventory on 30.07.2010 as well as the petitioner not being present at the time of the search, have not been denied. No reply has been filed on behalf of respondent No.2 despite a number of opportunities having been granted to him. On the previous date of hearing i.e. 01.11.2018, counsel for respondent No.2 did not put in appearance and it was directed that he be informed of the next date of hearing. Office report indicates that counsel for respondent No.2 was informed telephonically but he has failed to put in appearance.

5. From the aforementioned facts, arguments raised by learned counsel for the petitioner as well as the pleadings of the parties, it is evident that the house of Subhash Chander son of Pheru Ram was searched by the police after the Sub-Divisional Magistrate, Balachaur passed the orders for issuance of search warrants on the request made by Assistant Registrar of Societies. During the search, the record of the Society was taken into possession and a detailed inventory was prepared as is evident from Annexure P-2 (colly) to which there is no rebuttal. The signature of the

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complainant-respondent No.2 exists on the inventory and thus, it is clear that he witnessed the search operation along with co-villagers, village Sarpanch, officials of Assistant Registrar of the Society and police officials. The averment of the petitioner that he was not present during the search operations, is fortified by the inventory (Annexure P-2), there being no rebuttal/denial thereof. Thus, the filing of the complaint (Annexure P-1) against the petitioner and other accused persons (who witnessed the search conducted on 30.07.2018 and whose presence is reflected in the inventory Annexure P-2) is motivated and malafide. It appears to be an effort to settle the personal scores and process of the criminal Court cannot be permitted to be misused for the said purpose. Thus, the complaint dated 19.08.2010 (Annexure P-3) and the summoning order dated 12.03.2013 (Annexure P-4) amount to a gross misuse and abuse of the process of the criminal Court and cannot be sustained.

6. The petition is accordingly allowed and the Complaint No.168-A/1 of 2010, dated 19.08.2010 (P-3) titled as “*Raghubir Singh vs. Kuldeep Singh and others*”, under Sections 452, 347, 392, 504, 506, 120-B IPC, pending in the Court of Sub Divisional Judicial Magistrate, Balachaur along with summoning order dated 12.03.2013 (Annexure P-4) as well as order dated 24.03.2014 (Annexure P-6) passed by the revisional Court, are quashed.

February 28, 2019

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No