

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.16096 of 2016 (O&M)
Date of Decision: 25.02.2019.

Ramesh and another

... Petitioners

Versus

Madan Lal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.S Rai, Sr. Advocate with
Mr. Anurag Arora, Advocate and
Mr. Surjeet Bhagu, Advocate
for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

SUDHIR MITTAL J. (ORAL)

The petitioners seek quashing of criminal complaint No.69/2014 dated 09.07.2013 titled as “Madan Lal Vs. Ramesh etc.” as well as summoning order dated 17.11.2015 (Annexure P-2) vide which the petitioners have been summoned to stand trial under Section 379, 427, 506 read with Section 34 IPC.

2. According to the complaint, a copy which has been annexed as Annexure P-4, the accused-petitioners cut two keekar trees from the land owned by the complainant and took them away. Since, the police did not take any action, the present complaint was filed. The relevant part of summoning order dated 17.11.2015 is as under:-

“In view of the statements of the complainant and other witnesses and other documentary evidence on record it is clear that prima facie both the accused in furtherance of their common intention cut the trees from the land complainant without his consent and caused wrongful loss and also threatened the complainant with dire consequences. Therefore,

prima facie case for summoning both the accused under Sections 379/427/506 read with Section 34 of Indian Penal Code is made out. Accused be summoned accordingly.”

3. Thus, the trial Court has summoned the petitioners after finding that the petitioners have cut trees from the land of the complainant without consent and have threatened to kill him. This finding is allegedly based on oral evidence as well as documentary evidence annexed with the complaint.

4. Learned Senior counsel for the petitioners submits that the documentary evidence annexed with the complaint in the shape of jamabandi for the year 2007-08, has been totally misread by the trial Court. According to the said document, the owners of the land in dispute are Bimla wife of Balram (half share) and Sharda wife of Rajender Kumar (half share). The ladies are close relatives of the petitioners and they have inherited the land in dispute from a common ancestor. The complainant is nobody so far as the land in dispute is concerned. His father Niku Ram son of Godu was the tenant thereupon as is apparent/proved from the jamabandi (Annexure P-3) and even aforementioned Niku passed away on 16.10.2014, prior to the passing of the impugned summoning order.

5. Thus, apart from the fact that the complainant could not have maintained the complaint in dispute, the petitioners could not have been summoned for theft of trees from land not owned by the complainant. Thus, the filing of the complaint (Annexure P-1) and passing of summoning order dated 17.11.2015 (Annexure P-2), is a sheer abuse and misuse of the process of the criminal Court and deserves to be quashed.

6. Notice of motion was issued vide order dated 02.02.2017. Thereafter, the matter was adjourned on a number of dates and was taken up on 18.09.2018 but on that date, it has been recorded that although respondent No.1 had been served, none has put in appearance on his behalf. Since the matter was taken up after a long

time, the case was adjourned in the interest of justice to 12.10.2018. On the said date, the matter was again adjourned to 14.12.2018 when it was recorded that the matter shall be heard on merits on the next date even if the counsel for respondent No.1 did not appear. Today, as on previous dates, respondent No.1 remains unrepresented.

7. It is obvious that the counsel for respondent No.1, is aware of the fact situation existing in this case and he is avoiding appearance so as to delay the matter.

8. The contentions raised by the learned Senior counsel for the petitioners have gone uncontroverted and thus, it is apparent that the complainant-respondent No.1 is utilizing the process of criminal law for settling his personal scores. It has been brought to my notice that the accused are the attorney holders of the true owner and are pursuing the case for eviction of the complainant from the land in dispute and, therefore, the present complaint has been filed. The process of the criminal Court cannot be utilized to settle personal scores. From the record, it is apparent that the complaint has been filed without any basis and the passing of the summoning order is based upon misreading of the evidence on record.

9 Accordingly, the petition is allowed, complaint case No.69/2014 of 09.07.2013 pending before the Sub-Divisional Judicial Magistrate, Ellenabad (Annexure P-1) and consequential proceedings thereof along with the summoning order, dated 17.11.2015 (Annexure P-2) is quashed.

25.02.2019
rekha sharma

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No