

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-19380 of 2017  
DATE OF DECISION:-11.01.2019

AVTAR SINGH @ TARA SINGH  
AND ANR.

...PETITIONERS...

V.

STATE OF HARYANA AND ANR.

...RESPONDENTS...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rakesh Nagpal, Advocate,  
for the petitioner.

Mr. Raj Kumar Makkar, Sr. DAG, Haryana.

Mr. G.C. Shahpuri, Advocate,  
for respondent No.2.

\*\*\*\*

**RAMENDRA JAIN, J. (ORAL)**

Through this petition under Section 482 Cr.P.C. prayer has been made for quashing FIR No.131 dated 08.12.2016, under Sections 427, 447, 506 and 34 IPC, Police Station Baragudha, District Sirsa (A-7) along with all consequential proceedings arising out of the aforesaid FIR and order dated 10.03.2017 passed by Id. Judicial Magistrate Ist Class, Sirsa (P-8), vide which charges under Sections 447, 427, 506/34 IPC have been framed against the petitioners.

Briefly, one Tej Kaur wife of Sarwan Singh, resident of village Sahuwala Ist Tehsil and District Sirsa, was owner of land in dispute, which she, by way of release deed transferred in favour of her real daughter namely, Amarjit Kaur wife of Labh Singh vide registered release

deed dated 12.05.2016 (P-1). Thereafter, Amarjit Kaur sold the land in dispute to the wife of petitioner No.1 and mother of petitioner No.2 vide registered sale deed bearing No.3418 dated 11.08.2016 (P-3) against sale consideration of Rs.32.30 lakh and handed over the possession of the same to them. Consequently, mutation was also sanctioned in favour of aforesaid vendees on 13.08.2016 (P-4).

However, immediately after 11 days of execution of registered release deed in favour of Amarjit Kaur vender of the wife of petitioner No.1 and mother of petitioner No.2, Tej Kaur, original owner on 23.05.2016, filed a civil suit for cancellation of the same against her daughter Amarjit Kaur, which is pending adjudication and she died. Consequently, complainant- Jagwant Singh being real son of Tej Kaur stepped into her shoe and started pursuing civil suit. Simultaneously, on 08.12.2016, Jagwant Singh also lodged aforesaid FIR against the petitioners on the allegations that they destroyed his crop trespassing into his possession.

After due investigation, final report under Section 173(2) Cr.P.C against the petitioners under under Sections 447, 427, 506 read with Section 34 IPC was filed and they have been charge sheeted accordingly, vide order dated 10.03.2017 (P-8).

Learned counsel for the petitioners contends that petitioner are bonafide purchasers of the suit land vide registered sale deed dated 11.08.2016 (P-3). There is specific recital in their sale deed of handing

over the possession to the petitioners by their vendor Amarjit Kaur over the disputed land, which was actually handed over to them on the spot. Mutation (P-4) in their favour also proves their possession over the disputed land. The trial court while framing charges has failed to appreciate that no question ever arose for the petitioners to destroy their own crop, being in possession of the disputed land. The petitioners are purchasers of the disputed land for valuable consideration of 32.30 lakhs.

On the other hand, learned State counsel assisted by learned counsel for the complainant opposing the aforesaid submissions, contends that sale deed dated 11.08.2016 (P-3) in favour of wife of petitioner No.1 and mother of petitioner No.2 is a fraudulent transaction in connivance with their vendor Amarjit Kaur, who cheating her mother got executed alleged release deed (P-1). When, Tej Kaur came to know about the aforesaid fraud of her daughter Amarjit Kaur, she immediately filed a civil suit against her daughter for cancellation of release deed, which is still pending adjudication. The police during investigation had found that petitioners had destroyed the crop over the land in dispute under the possession of complainant.

Moreso, instant petition is not maintainable as the impugned order is revisable. Therefore, petitioners ought to have approached revisional court and not this Court under Section 482 Cr.P.C. The bone of contention in between the parties is of possession over the disputed land, which can only be adjudicated after appreciation of evidence. The trial

court finding a prima facie case has framed charges against the petitioners

under Sections 447, 427, 506 read with Section 34 IPC. Even one prosecution witness has also to be examined. Therefore, at this stage FIR cannot be quashed.

In support of his argument, learned counsel for the complainant has relied upon the judgments cited as **2017(5) RCR Criminal 81** titled as **"Ajay Kumar vs. State of HP"**, **2017(5) RCR (Criminal) 659** titled as **"Virender Singh Rawat Vs. Rajesh Kumar Gupta"** and **2017 (5) RCR (Criminal) 52** titled as **"Rupa Ram vs. The State of Rajasthan"**.

Having given anxious consideration to the rival submissions, this Court finds instant petition merit acceptance for the reasons to follow:-

1. The Hon'ble Apex Court and this Court through various pronouncements have repeatedly held that this Court under Section 482 Cr.P.C. has very wide powers. It can exercise its power, even in a case where revision lies.

2. Release deed in favour of Amarjit Kaur is a registered document duly thumb marked by its executor Tej Kaur, who is none else but, was her mother. The sale deed (P-3) executed by Amarjit Kaur in favour of the wife and mother of petitioners No.1 and 2 respectively is also a registered document. Therefore, both the said documents are public documents. Perusal of sale deed (P-3) in favour of the wife and mother of petitioners No.1 and 2 respectively finds specific recital qua delivery of possession of disputed land by their vender to them. On the basis of sale

deed, un-disputedly mutation (P-4) was sanctioned by the revenue authorities. As per revenue record also prima facie possession of the disputed land as on date is with the wife and mother of petitioners No.1 and 2 respectively.

3. Filing of a civil suit by original owner, now, deceased Tej Kaur against her daughter Amarjit Kaur, after execution of release deed (P-1) does not affect the rights of the wife and mother of petitioners No.1 and 2 respectively until and unless sale deed in their favour is not declared invalid.

4. As on date, there is no order or judgment setting aside or cancelling release deed (P-1) and sale deed (P-3). Therefore, possession of the petitioners over the disputed land cannot be doubted.

5. Registration of FIR by the complainant after stepping into the shoes of Tej Kaur, filing of final report under Section 173 (2) Cr.P.C. by the police for framing of charge against the petitioners, in view of the above factual aspects of the case has no legs to stand, inasmuch as, the complainant has no document qua possession of suit land in his favour.

The Apex Court in *Virender Singh Rawat's* case (supra) has specifically mentioned that this is not such a case, where the High Court was presented with such material, as would clearly exculpate the respondent from the occurrence. This wording of the Apex Court is in itself sufficient to say that in peculiar circumstances of that particular case

order passed by the High Court, setting aside charges framed against the respondent was set aside. Therefore, the said authority has no application on the facts and circumstances of this case, which is altogether different, inasmuch as, in that case, there was no material before the High Court, which could clearly exculpate the respondent from the occurrence, whereas, in the instant case, petitioners are armed with a registered sale deed (P-3) in their favour with recital about delivery of possession by their vendor to them. That apart, mutation (P-4) further prima facie proves their possession over the disputed land.

In *Ajay Kumar's* case (supra) Himachal Pradesh High Court has held that disputed question of facts in judicial proceedings should be decided by Court after giving due opportunities to both the parties to prove their case. The High Court, in its inherent powers, should not convert itself into the trial court in proceedings under Section 482 Cr.P.C.

This Court does not dispute the above proposition of law, but at the same time, would like to add that in the instant case, the petitioners have a prima facie case in their favour qua possession over the disputed land. Therefore, destroying of crop by them as per allegation of the complainant on the face of it, seems to be false.

In *Rupa Ram's* case (supra) some dispute was pending between the parties, before the revenue authorities. In these circumstances Rajasthan High Court held that it was not proper to quash FIR under Section 482 Cr.P.C., whereas, in the instant case, there are no such

circumstances, inasmuch as, no litigation is pending between the parties before the revenue authorities.

In the given facts and circumstances, the authorities relied upon by learned counsel for the respondent-complainant, altogether on different issue and distinguishable on the facts of the present case are of no help to him.

In view of discussion made above, the impugned FIR along with all subsequent proceedings are quashed qua the petitioners.

11.01.2019

sonika

**(RAMENDRA JAIN)**  
**JUDGE**

**whether speaking/reasoned:**  
**whether reportable:**

**Yes/No**  
**Yes/No**