

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

Sr. No.240

**CRM-M-24118 of 2013 (O&M)  
DECIDED ON: January 24, 2019**

**RAKESH KUMAR AND ANOTHER**

**..PETITIONERS**

**VERSUS**

**STATE OF HARYANA AND ANOTHER**

**...RESPONDENTS**

**CRR No.3166 OF 2013 (O&M)**

**RAKESH KUMAR AND OTHERS**

**..PETITIONERS**

**VERSUS**

**STATE OF HARYANA**

**...RESPONDENT**

**CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Ashish Aggarwal, Senior Advocate with  
Mr. Parunjeet Singh, Advocate,  
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

Ms. Savita Rana, Advocate,  
for respondent No.2-complainant.

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**SUDHIR MITTAL, J. (ORAL)**

By this common judgment I shall decided CRM-M-24118-2013  
as well as CRR-3166-2013 as common issues are involved therein and  
common arguments have been raised by learned counsel for the parties.

The brief factual matrix of the case which is not disputed by  
either of the parties, is that the petitioners in CRM-M-24118-2013

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executed an agreement to sell dated 1.4.2011 (P-2) in respect of 12 kanals of land situated in village Balhera, Tehsil Gharaunda, District Karnal, in favour of one Kaptan Singh and the total sale consideration agreed was Rs.21.30 lakhs. The agreement to sell was a full payment agreement and pursuant thereto possession was handed over to said Kaptan Singh. Respondent No.2-complainant in CRM-M-24118-2013 is an attesting witness of the agreement. Thereafter, said Kaptan Singh executed a full payment agreement to sell dated 3.10.2011 (R-2) in favour of the complainant for sale consideration of Rs.24 lacs. Another agreement to sell dated 18.10.2011 (P-4 in CRR-3166-2013) was executed by respondent No.2-complainant in favour of one Sohan Singh for a total sale consideration of Rs.15.11 lacs. It is recorded in the said agreement that possession was also handed over on the same date to Sohan Singh. The impugned FIR No.487 dated 16.10.2012 came to be registered at Police Station Gharaunda, District Karnal, under Sections 148, 149, 447, 506 IPC and 3 (v) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the petitioners, namely, Rakesh Kumar and Rajesh Kumar sons of Rakam Singh on the complaint of respondent No.2-Mehar Singh. Thus, CRM-M-24118-2013 was filed seeking quashing of the said FIR. Meanwhile, vide order dated 23.9.2013, the trial Court framed charges under Sections 148, 149, 447, 506 IPC and Section 3 (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') leading to filing of CRR-3166-2013. Thus, the common question to be decided is whether in the facts and circumstances of this case, it can be

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said that the registration of the FIR is mala fide and amounts to an abuse and misuse of the process of the criminal Court and thus, the petitioners should have been discharged by the trial Court.

Learned senior counsel for the petitioners submits that from the facts and circumstances of this case, it is apparent that the registration of the FIR is mala fide. On 11.6.2012 (R-6), the complainant-respondent No.2 gave a complaint to the police that an incident took place on 10.6.2012 in which the petitioners and others trespassed into the land measuring 12 kanals (subject matter of the various agreements of sell mentioned hereinabove) and interfered in the lawful enjoyment of the said property of the complainant-respondent No.2. Derogatory words related to his caste were also uttered. This was followed by a complaint dated 14.6.2012 (R-6) made to the Deputy Commissioner, Karnal, in which it was again reiterated that the petitioners and others had attempted to dispossess the complainant-respondent No.2 on 10.6.2012. However, in the impugned FIR it has been mentioned that the complainant-respondent No.2 had in fact been dispossessed in the incident of 10.6.2012 and thus, it showed that an improved version of the incident was recorded in the FIR. Further, much prior to registration of the complaints and FIR, a civil suit dated 23.3.2012 (P-3) for mandatory injunction was filed by the complainant-respondent No.2 seeking directions to the petitioners to execute sale deed in his favour. This suit was ultimately withdrawn and a suit for specific performance dated 18.1.2014 was filed. Reference has been made to statement dated 7.11.2016 of the complainant-respondent No.2 recorded in the suit for specific

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performance in which it is admitted that possession of the suit land remained with him. In the said statement, the complainant-respondent No.2 also admitted execution of a cancellation deed dated 8.6.2012 between the petitioners and Kaptan Singh. Thus, it is argued that a civil dispute has been given the colour of a criminal case. In view of the admission of the complainant-respondent No.2 that he remained in possession of the suit land, it is apparent that no criminal trespass was committed by the petitioners. The cancellation deed dated 8.6.2012 also establishes that agreement to sell dated 01.04.2011 ceased to exist and thus, possession remained with the petitioners. In this view of the matter also the allegation of criminal trespass is not substantiated. Moreover, a Naib Tehsildar of the concerned area had passed an order dated 06.04.2015 ordering restoration of possession in favour of complainant-respondent No.2 and the same was challenged by the petitioners by way of CWP No.12065 of 2013. During the pendency thereof, the Deputy Commissioner submitted an affidavit dated 05.08.2015 stating therein that the order dated 06.04.2015 passed by the Naib Tehsildar had been withdrawn. This also shows that the petitioners have remained in possession of the land in dispute. From the aforementioned facts it becomes clear that complainant-respondent No.2 has involved the petitioners in a false case. Initially, he stated that there was an attempt to dispossess him and subsequently improved his version while getting the FIR registered and therefore, malafides are apparent. The evidence on record also indicates that the complainant-respondent No.2 has himself admitted that he remained in possession of the land in dispute and thus Section 447 IPC is not attracted. The complainant-respondent No.2 has also concealed the agreement to sell dated 18.10.2011 and according to

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the terms of the said agreement possession was handed over to Sohan Singh. In this view of the matter also, when the complainant-respondent No.2 was not in possession of the land in dispute, there was no question of criminal trespass by the petitioners. Regarding Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is submitted that from the evidence on record it is apparent that the petitioners were never dispossessed and thus, Section 3 (v) of the aforementioned Act is also not attracted. Accordingly, the FIR as well as the charge framed vide order dated 23.09.2013 deserve to be quashed.

Learned State counsel as well as counsel for the complainant-respondent No.2 opposed the prayer. It is stated that cancellation deed dated 08.06.2012 is disputed. The said deed has not been produced on record of the case till date. The agreement to sell dated 18.10.2011 was executed but the transaction thereupon could not fructify. Possession was not handed over to Sohan Singh as he failed to pay the sale consideration and thus, possession remained with the complainant-respondent No.2. The improvement in the version of the complainant-respondent No.2 has taken place only because after the petitioners accompanied by a large number of people entered his land, he ran away from there and did not realise immediately that he had been physically dispossessed. Further, it is submitted that disputed questions of fact are involved and the same can be resolved only on the basis of the evidence led by the parties. Thus, no ground for quashing is made out. Meanwhile, the evidence in the case has been completed and the matter is now pending for final arguments. Thus, the petitions deserve to be dismissed.

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In rebuttal, learned senior counsel for the petitioners submits that the explanation given regarding improvement of his case by the complainant-respondent No.2 he cannot be accepted because although the first complaint is dated 11.06.2012, the subsequent complaint dated 14.06.2012 was submitted 04 days after the date of the alleged incident. By then, the complainant-respondent No.2 would have realised that he had been dispossessed and yet he chose not to say so in the complaint. It is thus evident that an attempt has been made to improve his case while getting the said FIR.

The arguments raised on behalf of the petitioners are based upon (a) possession of the land in dispute remaining with the petitioners as agreement to sell dated 01.04.2011 had been cancelled in view of cancellation deed dated 08.06.2012, which is allegedly admitted by the complainant-respondent No.2 in his statement dated 07.11.2016 and (b) the complainant-respondent No.2 is in possession of the land in dispute, which is based upon another part of the statement dated 07.11.2016. In either case, the submission is that the offence under Section 447 IPC is not made out. Section 447 IPC describes the punishment for criminal trespass. Criminal trespass is defined by Section 441 IPC, which is reproduced below for ready reference:

*441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.*

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The bare provision provides that if a person enters into the property of another either with the intent to commit an offence or to intimidate insult or annoy the person in possession of the property, the offence of criminal trespass is committed. The argument of learned senior counsel for the petitioners that criminal trespass is not made out in the facts and circumstances of this case, can be accepted only if a finding of fact is returned that the petitioners were in possession of the land in dispute on the date of the alleged incident. The petitioners allege that in view of cancellation of agreement to sell dated 01.04.2011, they remained in possession of the land in dispute whereas, the cancellation is denied by the complainant-respondent No.2. Thus, evidence is required to be led and evaluated by a competent Court to reach a final conclusion in this regard. In exercise of jurisdiction under Section 482 Cr.P.C. I cannot undertake this exercise and therefore, the submission of the learned senior counsel has to be rejected. Coming to the second limb of the argument of the learned senior counsel for the petitioners, which is based upon the alleged admission of the complainant-respondent No.2 in his statement dated 07.11.2016 that he was in possession of the land in dispute, it again has to be held that it is a matter to be decided on the basis of evaluation of the evidence. Even if I accept that this is in fact the existing status on ground, it is difficult for me to hold that offence under Section 447 IPC is not attracted because an intent to commit an offence or to intimidate a person in possession of the property amounts to criminal trespass and his physical dispossession is not necessary. Another facet of this argument is that pursuant to agreement dated 18.10.2011, the complainant-respondent No.2 had handed over possession to Sohan Singh and thus, he was not in

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possession on the date of the alleged incident. The argument is that there was no question of either dispossession or interference in the possession of the complainant-respondent No.2. However, this is again a disputed question of fact as the complainant-respondent No.2 has stated that the said agreement did not fructify and no transaction took place pursuant thereto. I cannot therefore return a finding that the registration of the FIR amounts to an abuse of the process of law.

Evidently, there are civil and criminal proceedings pending between the parties. Under the circumstances, an aggrieved party may attempt to garnish his case and that is what appears to have happened in the instant case as well. To start with allegations of attempted dispossession were made but finally, the FIR records that dispossession actually took place. This in itself cannot be said to be an action which is malicious and mala fide to an extent that the same should lead to quashing of the FIR. This argument of the learned senior counsel for the petitioners also deserves to be rejected.

In view of my findings aforementioned that Section 447 IPC is prima facie attracted in the facts and circumstances of this case, logically, the offence under Section 3(v) of the aforementioned Act is also prima facie attracted. The requirement thereunder is that a person belonging to the Scheduled Caste and Scheduled Tribe is either dispossessed or his enjoyment of rights over the land in dispute are interfered with. Having held that in the facts and circumstances of this case, it cannot be held that Section 447 IPC is not attracted, perforce, I cannot hold that Section 3 (v) of the Act is not attracted.

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For the reasons aforementioned, the petitions are without merit and deserve to be dismissed. It is, however, made clear that nothing stated hereinabove shall influence the final decision of the trial Court. The trial Court shall decide the case pending before it based solely upon the evidence on record and shall not be influenced by any observation of this Court made hereinabove.

A copy of this order be placed on the file of another connected case.

**January 24, 2019**

*Ankur*

**(SUDHIR MITTAL)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No