

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14514-2019

Date of decision: 20.05.2019

Darshan Singh and others

... Petitioners

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.P.S. Ghuman, Advocate
for the petitioners.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.89 dated 02.10.2018 under Sections 477, 511, 427, 506, 148, 149 of the Indian Penal Code (for short 'IPC'), registered at Police Station Bhadson, District Patiala and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioners has submitted that the FIR was registered on false grounds, as father of petitioner No.1 Harnek Singh was owner of 14 bighas, 02 biswa of joint land. Harnek Singh had four sons and after his death, all four sons namely Darshan Singh, Harpal Singh, Gurdeep Singh and Didar Singh inherited his estate to the extent of 3.1/2 bighas each. Didar Singh sold his share to Darshan Singh (petitioner No.1), Harpal Singh sold his share to Bhag Singh and then Bhag Singh sold the property to petitioner No.1 and thus, Darshan Singh became owner of three shares.

Gurdeep Singh, father of respondent No.2-complainant, sold his share to Ram Singh and he left with no land. It is argued that despite these facts, the FIR has been registered with the allegations that on 30.09.2018, when complainant Kulwinder Singh son of Gurdeep Singh had gone to his 02 bighas of land, which is in the name of his father and another 02 bighas 12 biswas, which was exchanged with Ram Singh and he is enjoying possession of the same, the petitioners-accused persons have cut the crops standing on the land, which was in possession of the complainant and has committed the theft by taking away the crops on their tractor. It is also stated in the FIR that occurrence was witnessed by Didar Singh and Amrik Singh.

Learned counsel for the petitioner has argued that the petitioners have filed a civil suit for permanent injunction against the complainant and others for restraining them from interfering in their share of land, in which the Civil Court, on 03.10.2018, has passed the order of status quo. The operative part of the order reads as under: -

“.....After hearing the arguments on ex-parte injunction and going through the documents placed on record with the plaint i.e. copy of the jamabandi for the year 2015-16 and in view of the fact that both the parties are co-sharer in undivided suit land, this Court is of the considered view that if the ex-parte injunction is not granted, the very purpose of filing the suit would be frustrated and it is a fit case for grant of ex-parte injunction. As such, status-quo is ordered to be maintained by the parties with respect to the suit land till 20.12.2018....”

Learned counsel has further argued that since the complainant

party was interfering in the possession of petitioners, they have filed an application under Order 39 Rule 2A CPC, which is also pending. It is further submitted that the police has also registered kalendra under Sections 107/151 Cr.P.C. on 12.10.2018 for maintaining peace at the spot and later on, the same was dropped by the Sub Divisional Judicial Magistrate on 22.11.2018, after the petitioners furnished a bond under Section 116 (3) Cr.P.C., thereafter, they were discharged. It is thus argued that on the face of it, from a bare perusal of the FIR, no offence is made out.

Learned counsel for the petitioner has next argued that though the case is at the stage of investigation and the police is yet to submit the report under Section 173 (2) Cr.P.C., however, this Court can still entertain the present petition and has relied upon a judgment of the Hon'ble Supreme Court in **Anand Kumar Mohatta and anr. Vs. State (Govt. of NCT of Delhi) Department of Home and anr., (2019) AIR (SC) 210**, wherein it is held that the order passed by the High Court, dismissing the petition filed under Section 482 Cr.P.C. praying for quashing of the FIR, on the ground that the case is still at the stage of investigation, is incorrect and the case was remanded back.

A perusal of this judgment shows that when the case was pending before the Hon'ble Supreme Court, in the meantime, the police has completed the investigation and had submitted the report under Section 173 Cr.P.C. and the Hon'ble Supreme Court, while relying upon the judgment in **State of Haryana and others Vs. Bhajan Lal and others (1192) Supp SCC 335**, has observed that the said case would fall in the category of cases, which are covered by the judgment in **Bhajan Lal's** case (supra).

After hearing learned counsel for the petitioners, I find no merit in

the present petition.

- (a) Though there is no dispute about the guidelines laid down by the Hon'ble Supreme Court in **Bhajan Lal's** case (supra) and **Anand Kumar Mohatta's** case (supra), however, considering the allegations in the FIR and the supporting documents, relied upon by the petitioners, I find that this case is not covered by judgment of the Hon'ble Supreme Court in **Bhajan Lal's** case (supra). The FIR was registered with a specific allegation that in the revenue record, father of complainant is owner of 02 bighas of land and the complainant has exchanged two bighas 12 biswas from one Ram Singh and the complainant is in possession for the last 10 years. The civil suit, which is filed by the petitioners on 03.10.2018, is subsequent to registration of the FIR dated 02.10.2018 and in para No.8 of this plaint (Annexure P-2), cause of action is stated to be 'a few days back', which shows that it is just to cover the registration of the impugned FIR.
- (b) Even otherwise, the order of the Civil Court under Order 39 Rules 1 & 2 CPC itself shows that it is a case where both the parties are co-sharer in undivided suit land and therefore, the arguments on behalf of the petitioners that the complainant party is not having any share in the land sans merit, as before the Civil Court, it is own case of the petitioners that the parties are co-sharer and the dispute is about cultivation of the land.
- (c) Even the kalendra registered under Sections 107/151 Cr.P.C. on 12.10.2018 primarily shows that there is a dispute about possession

of the land, in which again complainant Kulwinder Singh has stated that he is in possession of 02 bighas 12 biswas of land and the petitioners were asked by the Sub Divisional Judicial Magistrate to furnish a bond for maintaining peace and thereafter, they were discharged in this kalendra, which also shows that even as per the police report, there was apprehension of breach of peace regarding attempt for taking the possession of land of the complainant. Thus, from the documents relied upon by the petitioners, it is apparent that the complainant is co-sharer of 04 bighas 12 biswas of land and has got the present FIR registered with the allegation that the petitioners have forcibly cut away his crops and committed the offence of theft.

(d) Admittedly, the matter is still at the stage of investigation, therefore, from the bare perusal of the FIR, I do not find that no offence is made out in view of the judgment of the Hon'ble Supreme Court in **Bhajan Lal's** case (supra).

Accordingly, this petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

20.05.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No