

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CRM-M-301-2013 (O&M)

Date of decision: 16.09.2019

Tarsem Singh and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Arvinder Singh, Advocate for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. P.S. Hundal, Advocate
for respondent No.2.

ANIL KSHETARPAL, J.

It is unfortunate that members of a family are litigating in Courts rather than settling their dispute by sitting together. Anyhow, the Court has to discharge its functions. Hence, this Court proceeds to decide.

A small pedigree table would be useful to understand the dispute and inter se relationship:-

	Bhag Singh @ Tara Singh	
	/	
	Tarsem Singh	
	/	
	/----- Satnam Kaur	
	/	
/	/	/
Jagjit Singh Gill	Manjit Singh	Sukhwinder Kaur

The petitioners are Tarsem Singh and Satnam Kaur, husband

and wife. First informant is Jagjit Singh son of Tarsem Singh. In other words, the first informant has lodged a criminal prosecution against his father and mother.

Jagjit Singh-respondent No.2 filed a complaint with averments that there was a family settlement between the parties and plot measuring 12 marlas situated in village Kurala Kalan was given to him and in lieu thereof, constructed house had fallen to the share of Tarsem Singh and his son Manjeet Singh. As per the family settlement, Jagjit Singh erected a boundary wall around the plot and also filled mud in the plot to raise its level by spending 3-4 lacs. After raising boundary wall and the gate at the entrance, a lock was put by the first informant. It is averred that when representative of the first informant-respondent visited the said plot, he found another lock at the entrance door and on inquiry, it was found that Tarsem Singh had threatened the representative with dire consequences by shouting that this is the property of Tarsem Singh and nobody should enter without his permission. When Amrik Singh intervened, he was pushed and threatened. When he scrutinized the revenue record, he came to know that petitioners namely his father and mother had conspired with each other and sold the plot to Simar Kaur vide sale deed No.1922. Thus, wrongful loss was claimed to have been caused to the first informant. Under valuation in the sale deed to avoid stamp duty was also alleged. Violation of Section 6 of Foreign Exchange Management Act (Acquisition and Transfer of Immovable Property in India) Regulation 2000 was also alleged. Tarsem Singh and Manjit Singh are non-resident Indians and the transfer deed executed by Tarsem

Singh in favour of Manjit Singh dated 15.07.2011 is without seeking permission of the Reserve Bank of India and the sale proceeds have not been mentioned in the transfer deed. Jagjit Singh-first informant has a legal share in the ancestral property which has been wrongly transferred in favour of Manjit Singh in illegal manner. The entire amount has been paid through Hawala transaction abroad and the transfer deed is part of well planned conspiracy of the accused.

The police after holding enquiry registered FIR under Sections 420, 447, 506 of the IPC and after completion of the investigation submitted a final report under Section 173 Cr.P.C. The petitioners have filed this petition under Section 482 Cr.P.C. seeking quashing of the FIR and subsequent proceedings.

It has come on record that Smt. Satnam Kaur-petitioner No.2 had purchased plot measuring 14 marlas vide sale deed dated 02.08.1974. Later on, she sold plot measuring 12 marlas in favour of Smt. Simar Kaur vide sale deed dated 22.06.2011. It has also come on record that Tarsem Singh had executed a transfer deed in favour of his other son Manjit Singh with respect to land measuring 57 kanal and 9 marlas vide registered deed dated 15.07.2011.

The police after investigation did not find violation of Foreign Exchange Management Act, 1999 read with Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulation 2000, Prevention of Money Laundering Act, 2002, Banking Regulation Act, 1949 and Income Tax Act, 1961.

It has also come on record that Jagjit Singh-first informant

had filed a suit against Tarsem Singh, Satnam Kaur, Manjit Singh and Sukhwinder Kaur claiming that the land measuring 59 kanals 8 marlas being 1/3rd share of land measuring 178 kanals 5 marlas is Hindu joint family co-parcenary property and therefore, the plaintiff has a right by birth. The result of above-said suit is not known.

This Court has heard learned counsel for the parties at great length and with their able assistance gone through the documents filed.

In the considered opinion of this Court, basically two issues needs consideration:-

1. Whether in the facts and circumstances of the present case, criminal proceedings initiated are abuse of the process of the Court?
2. Whether in the facts and circumstances of the present case, the dispute between the parties is of civil nature and therefore, it would not be appropriate to continue criminal proceedings?

As regards first issue, it is apparent that petitioners are father and mother of first informant. There are basically two parts of the property which are in dispute. One is 12 marlas plot which was purchased by Satnam Kaur in the year 1974 and some part thereof has been sold by Satnam Kaur in favour of Simar Kaur vide sale deed dated 22.06.2011. The first informant claimed that the aforesaid plot had come to his share in a family settlement. No document in this regard has been produced. Still further, a reading of the final report, it is apparent that the investigating agency did not find that first informant had been forcibly

dispossessed or the lock put by him had been removed. Further, there is no finding of a competent Court to the effect that in a family settlement, the plot in question had come to the share of the petitioners.

Now let us deal with the second part of the criminal case. The first informant alleges that the agriculture land referred to above is a Hindu joint family co-parcenary property and therefore, his father had no right to transfer. The first informant has already filed a suit for declaration to that effect by impleading remaining family members as defendants. The first informant in spite of the opportunity given has not chosen to file any reply to this petition. It has not been brought to the notice of this Court, what is the result in aforesaid civil suit filed by first informant.

The execution of the transfer deed by the father in favour of his son-Manjit Singh does not give rise to any criminal offence. The first informant at the most is entitled to file a suit for declaration which has already been filed.

In such circumstances, this Court is of the considered view that the criminal proceedings initiated by the first informant are clearly abuse of the process of the Court.

Now let us examine second issue framed above.

From the facts and circumstances of the present case, it is established that the dispute between the parties is of civil nature and the first informant has attempted to give it a colour of criminal offences. In the present case, investigating agency has failed to lift the veil and find that the dispute between the parties is of civil nature. The investigating

agency should be careful before filing a final report. The investigating agencies are bound to examine the facts which have come on record and make a sincere endeavour to avoid presentation of the final report (challan) unless the prosecution agencies are of the opinion that a criminal offence is made out. These days, lot of civil disputes are being given cloak of criminal offence so as to settle the scores in indirect and deceitful manner. The investigating agencies are required to vigilant so as to avoid any abuse of the process of the Court.

Hence, both the issues are decided in favour of the petitioners.

Before parting, it would be important to point out here that a reading of the final report which has been annexed by the State, it is apparent that the investigating agency apart from reproducing the complaint, which resulted into registration of the FIR, has not by any process of reasoning found that how the offences are made out. The operative part of the final report is re-produced as under:-

“Enquiry of the application was conducted by DSP Hoshiarpur and later on the FIR U/S 420, 447, 506 IPC was registered after obtaining opinion from DA legal Hoshiarpur. Investigation of the case was done by ASI Ajmer Singh PS Tanda. Statement of witnesses were recorded and rough site plan was prepared. Accused Tarsem Singh and Satnam Kaur were arrested and released on bail. Documentary evidence application, sale deed etc. against the accused has been taken into custody. The investigation of the case is completed and has been sent for further proceeding and for recording the statements of witnesses and for appropriate judgment.”

It is apparent that the final report does not show any application of mind by the investigating agency. No reasons are forthcoming as to how prosecuting agency has formed an opinion that criminal offences under Sections 420, 447, 506 IPC have been committed. The purpose of filing a report is to apprise the Court as to how the investigating agency considers that criminal offences as alleged are made out against the accused who are being sent to face criminal trial. The final report cannot be submitted in a casual manner.

The word challan as is commonly used is in fact a police report as defined in Section 2(r) of the Code of Criminal Procedure. Section 173 provides that on completion of the investigation, officer incharge of the Police Station shall forward to a Magistrate empowered to take cognizance of an offence a police report in the form prescribed by the State Government. Clause (d) of sub-Section 2 of Section 173 uses the word “appears to have been committed”. Therefore, the final report must reflect how the prosecuting agency has formed an opinion that the offence appears to have been committed. It has been noticed that police report as provided under Section 173 are mechanically forwarded by the prosecuting agency without discussing as to what material/evidence has been collected by the prosecuting agency and how it has formed an opinion. The report by the prosecuting agency is not merely forwarding the information supplied by the first informant and the evidence collected. The Code of Criminal Procedure obligates prosecuting agency to inform the Magistrate how the offence appears to have been committed.

Sub-Section 5 of Section 173 makes it obligatory for the police officer to forward to the Magistrate alongwith the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation. Statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses must also be attached with the report. Sub-Section 6 further obliges the police officer to indicate that part of the statements not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice or is inexpedient in the public interest by stating his reasons for making such requests. Obviously from the reading of Section 173, it is clear that the police report on completion of investigation has to be comprehensive and must disclose the process of reasoning which resulted into forming an opinion that accused being sent for trial has committed an offence.

Still further, it has also been noticed that the Magistrate pass the order framing charge and frame charges without due application of mind. No doubt, the order framing of charges is not required to be speaking or detailed one, however, it is mandatory for the Court before ordering framing of the criminal charge to apply mind and such application of mind must be reflected in the order. The order passed ordering framing of charge is required to be on due application of judicial mind, may not be detailed one.

In view of the aforesaid, Registrar General of this Court is directed to circulate copy of the judgment to all Session Judges in the

States of Punjab, Haryana and UT Chandigarh for onward transmission to the Magistrates posted in that area. The copy of the judgment be also forwarded to respective Home Secretaries of States of Punjab, Haryana and UT Chandigarh for their information and necessary action.

Hence, the practice of submitting final reports by the police/Investigating agency without explaining as to how the offences are made out is deprecated.

In view of the aforesaid discussion, the FIR and subsequent proceedings are ordered to be quashed.

The petition allowed.

16.09.2019

Rekha(D)/Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No