

In the High Court of Punjab and Haryana at Chandigarh

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Cr. Misc. No.M-27460 of 2014

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Date of decision:11.03.2019

Budh Singh and another

.....Petitioners

v.

State of Punjab and another

.....Respondents

.....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naresh Kumar, Advocate for the petitioners.

Ms. Monika Jalota, Deputy Advocate General, Punjab for the
respondent-State.

Mr. Ish Puneet Singh, Advocate for respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.1 dated 3.1.2013 (Annexure-P.1) registered for the offences under Sections 447, 511, 427 and 34 IPC at Police Station NRI, Hoshiarpur, District Hoshiarpur and all subsequent proceedings arising therefrom.

Notice of motion was issued.

Ms. Monika Jalota, learned Deputy Advocate General, Punjab has appeared on behalf of the respondent-State and Mr. Ish Puneet Singh, learned Advocate has appeared on behalf of respondent No.2 and contested

this petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the FIR in the present case has been got registered on the basis of application submitted by Sukhjinder Singh Parmar-complainant, in which he stated that a complaint against Budh Singh was filed for illegally encroaching upon his property and a settlement verdict was issued by the office of Senior Superintendent of Police, Hoshiarpur, wherein Budh Singh had given a statement in writing stating that he will no longer interfere in the issues pertaining to their land. However, in spite of this settlement, he encroached upon portion measuring approximately 2-3 Kanals of their vacant land adjacent to his land on 4/5th October, 2012, by going against his statement issued on 6.8.2012. It has also been mentioned in the FIR that he flooded his land overnight and has also cultivated it along with his land. It has also been mentioned in the FIR that the complainant is an NRI. After investigation, challan was presented and charges were framed as stated by learned State counsel which means that the Court has already taken the cognizance.

Learned counsel for the petitioners mainly argued on one point that there is no document to show the exclusive possession of the complainant on any property and the 'Khata' is still joint and every co-sharer is treated to be in possession of every inch of the land. Therefore, in no way, any offence regarding trespass etc. can be held to have been committed by the petitioners. Secondly, the learned counsel for the petitioners argued that no such occurrence had taken place as stated in the FIR regarding

flooding the land overnight etc.

After going through the record and after hearing learned counsel for the parties as well as learned State counsel, I find that earlier as per Annexure-P.2, which was a report regarding earlier application given to the SSP, it has been mentioned that the said land is joint and common. Budh Singh had given the statement that land is in joint 'Khata' in his name and in the names of his brothers and their children. The said land is joint and common and he has agreed with the version that the land should be partitioned. Whosoever gets the share he will be in possession with regard to the same share. He has further submitted that he has not taken possession of any land which is in possession of his brother's children. During the inquiry, it was mentioned that the complainant's father when he was alive gave his share of his land on rent. This statement of Budh Singh-present petitioner as well as this report of the Investigating Officer show that though the 'Khata' is still joint in the revenue record and partition by metes and bounds had not taken place, but Budh Singh agreed that he will not interfere in the land which is in possession of the complainant, which means *prima facie* the complainant was in exclusive possession of some land of their share etc. The complainant is making the statement that he is in exclusive possession in the joint 'Khata' over some portion regarding which the present petitioners have made illegal encroachments and also caused damage by flooding the land. The petitioners denied the occurrence whereas learned counsel for the private respondent contested this fact and said that the occurrence as it is took place. These are disputed facts between the parties which are to be determined by the trial Court on the basis of

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evidence. At this stage, this Court cannot give the finding of fact without any evidence and the Court cannot give the findings of facts in the proceedings under Section 482 Cr.PC.

Therefore, in view of the above discussion, whether the complainant is in exclusive possession over some portion of the disputed property or not is to be determined by the trial Court on the basis of evidence.

Therefore, finding no merit in this petition, the same is dismissed.

March 11, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No