

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.250

CRM-M-36869-2012 (O&M)

Date of decision : 11.2.2019

M/s Vikas Marble & Granite and others

..... Petitioners

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Paras Talwar, Advocate, for the petitioners.

Mr. Deepak Grewal, DAG, Haryana

Mr. Arvind Seth, Advocate, for respondent No.2.

SUDHIR MITTAL, J. (Oral)

The petitioners seek quashing of FIR No.45 dated 21.3.2012, registered at Police Station DLF, Phase-I, District Gurgaon, under Sections 379, 188 of IPC and all subsequent proceedings having arisen therefrom.

A perusal of the FIR, a copy of which has been annexed as Annexure P1, shows that on a joint inspection of Municipal Corporation, Gurgaon and Haryana Urban Development Authority, Gurgaon (for short 'HUDA'), it was revealed that the shops of the petitioners had encroached upon public land and had stored material thereupon. Consequently, the shops were seized on 9.1.2012 and 10.1.2012 and the material placed upon the encroached area was also taken into possession. During surprise checking on 15.3.2012, it was discovered that shopkeepers had removed the rope encircling the material of which possession had been taken and had removed the same. Consequently, FIR aforementioned was registered.

Learned senior counsel for the petitioners states that there was a dispute between the petitioners and the Municipal Corporation, Gurgaon, regarding allotment of sites. The petitioners filed CWP No.16873 of 2004,

in which order dated 20.4.2006 (P2) was passed ordering status quo to be maintained regarding possession till the final decision of a committee constituted by the Chief Administrator, HUDA. A review application was filed subsequently, on which order dated 7.9.2009 (P3) was passed directing order dated 20.4.2016 to continue till further orders.

Thereafter, the petitioners filed a contempt petition viz. COCP No.2111 of 2009 and notice of motion was issued vide order dated 27.11.2009 (P4) alongwith directions to the respondents therein to comply with order dated 7.9.2009 in letter and spirit. Thus, the implication was that the petitioners would not be disturbed from the site they were occupying. Thereafter, a bunch of contempt petitions viz. COCP No.666, 667, 668, 669 of 2011, was filed in which vide order dated 7.3.2012 (P5), this Court directed that there should be no obstruction to loading/unloading of marble in the leased area. However, liberty was granted to respondents to remove encroachment, if any, after giving 24 hours' notice. Since, the petitioners were taking advantage of order dated 20.4.2006 extended vide order dated 7.9.2009, the petitioners were still in possession of area beyond the leased area and thus, in compliance with order dated 7.3.2012, the encroachments were removed by removing the material on the encroached area on 15.3.2012. Since, the petitioners were duty bound to remove the encroachment, no offence was committed by them and in any case, Section 379 IPC, would not be attracted as the marble was admittedly owned by the petitioners.

Learned State counsel as well as counsel for respondent No.2 submit that stay order was vacated by this Court and thereafter, the trial has progressed. Out of total 14 PWs, 06 PWs have been examined and therefore, the trial is nearing completion. Thus, no orders in exercise of

jurisdiction under Section 482 Cr.P.C are called for. However, learned counsel have no answer to the argument of the learned senior counsel for the petitioners that the marble was removed consequent to order dated 7.3.2012 (P5) passed by this Court. The explanation given by counsel for respondent No.2 is that stock was seized on 9/10.1.2012, whereas the order to vacate the encroached area was passed on 7.3.2012. No liberty was given to the petitioners to remove the material which had already been seized and therefore, the registration of aforementioned FIR was justified.

From the arguments of learned counsel for the parties, it is clear that dispute is regarding encroachment of public land. The petitioners were not allotted alternative sites by the HUDA and thus, allegedly, they were carrying on business from land owned by the Municipal Corporation, Gurgaon. Various orders were passed in the civil litigation, ultimately, resulting in order dated 7.3.2012 (P5), whereby, the Municipal Corporation, Gurgaon, was directed to evict the petitioners from encroached land by giving them 24 hours' notice. It is not in dispute that the material was removed on 15.3.2012 as a result of the order dated 7.3.2012. The explanation sought to be given by counsel for respondent No.2 is that the petitioners should have brought to the notice of this Court that their material already stood seized vide inspection carried on 9/10.1.2012. I am however, unable to accept this submission. Even if, the petitioners had brought this fact to the notice of this Court, this Court would have permitted the petitioners to remove the seized material. This is not just a conjecture but is fortified by order dated 26.3.2012, where in another contempt petition filed by the petitioners, this Court granted them liberty to remove the material stored on encroached land. In any case, the primary dispute between the parties is purely civil in nature and thus, registration of aforementioned FIR

is not justified. Under the facts and circumstances of this case, it is gross misuse of the criminal justice administration system.

Accordingly, FIR No.45 dated 21.3.2012, registered at Police Station DLF, Phase-I, District Gurgaon, under Sections 379, 188 of IPC and all subsequent proceedings having arisen therefrom is quashed qua the petitioners.

(SUDHIR MITTAL)
JUDGE

11.2.2019
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No