

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

CRM-M No.39021 of 2017 (O&M)

Date of decision: 22.07.2019

Mukesh Kumar

....Petitioner

Versus

Surinder and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. A.S. Sheoran, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 14.05.2015 (Annexure P-1) passed by the trial Court as well as the judgment dated 18.09.2017 (Annexure P-2) passed by the Lower Appellate Court vide which the respondents/accused were discharged.

Brief facts of the case are that the petitioner/complainant filed a complaint under Sections 447, 511, 427, 506 IPC on the allegation that he along with one Rama, Surinder, Dhanpati, Kamlesh and Krishna had purchased some land from one Mahavir vide different sale deeds in the year 2006-07 and he was handed over the possession by seller. When he was digging the foundation for construction of his shop, on 14.06.2009, he came to know that the accused have demolished the construction raised by him and when he visited the spot along with a witness namely Gugan, he found that the foundation was demolished with a JCB. Thereafter, he registered an FIR No.91 dated

14.06.2009 under Sections 447, 511, 427, 506 IPC, but the police submitted a cancellation report. The petitioner, thereafter, filed the present complaint and examined himself as PW1, Gudan as PW2, PW3 as Hoshiar Singh and PW4 ASI Dayanand, who registered the FIR No.91 dated 14.06.2009. The petitioner also produced some documentary evidence i.e. Ex.P-1 to Ex.P-6, the sale deed Ex.P-7, copy of FIR No.91 dated 14.06.2009 Ex.P8, the demarcation report dated 30.06.2009. Thereafter, the trial Court dismissed the complaint and discharged the accused vide order dated 14.05.2015, by passing a detailed order. The operative part of the order dated 14.05.2015, reads as follows:-

“9. I have heard learned counsel for the complainant and learned counsel for accused and perused the case file very carefully.

10. It has been argued by learned counsel for the complainant that on 14.6.2009 at about 5.00 AM complainant received information that accused persons have got demolished the shop of complainant on which he alongwith Gudan Ram went to the spot where, accused have threatened them to kill. The complainant is owner of the property comprised in Khasra no.155, khewat no. 180, Mustil no. 121, Killa no.13, one marla vide sale deed no. 1589 dated 25.1.2006. He has purchased this property alongwith other person namely Rama, Surender and Dhanpati, Kamlesh and Krishha in the year 2006-2007 from Mahabir Singh vide different sale deeds. After purchasing the lands, all the purchasers have taken the possession and also dug the foundations of their respective shops but accused persons have demolished the same and threatened them to kill. Hence charge should be framed against them.

11. On the other hand, it has been contended by learned defence counsel that complainant has failed to prove the exclusive possession over the property alleged to be purchased by them. Complainant himself has admitted in his cross examination that he has only purchased some share. No specific possession of the land was given to complainant. Moreover, there is no report on the file that the accused persons have caused any loss to the complainant. Hence accused are entitled for discharge.

12. After hearing learned counsel for the complainant, this court is of the view that the present complaint has been filed by the complainant on the averments that information was received on 14.6.2009 at about 5.00AM that accused persons have got demolished their shop by JCB. Accordingly, he and Gudan went to the spot and saw the accused persons. When he objected then all of them threatened him to kill. In order to form the charge under section 447 IPC complainant was required to prove the fact that accused have entered into the land which was in exclusive possession of him. Complainant has stated that he came into possession of the property vide sale deed no. 1589 dated 25.10.2006. A perusal of this sale deed Ex. P1 goes to show that it is only a photo copy which is placed on file and it has not been proved as per Indian Evidence Act. Otherwise also as per this sale deed Mahabir has sold out one marla i.e.33Sq land out of Khasra no. 155, Khatoni no. 180, Mustil no. 121, killa no.13 measuring 3 kanal 1 marla to the extent of 1/61th share to the complainant. From this recital it is clear that complainant has only purchased the share in this land for Rs. 70,000/-. It is mentioned in the sale deed that the joint possession is delivered to the complainant as of the vendor. No specific killa number or boundaries have been mentioned. So, it is not proved that complainant was in

exclusive possession of shop, where accused made criminal trespass.

13. Secondly, from the demarcation report Ex. P8 dated 30.6.2009 it reveals that the land comprised in killa no. 121/4-5-6-7-14-15-16-17/1-18/1-26, 122/1-10-11, 121/9/1/1/2, 9/2/3/6/1, was demarcated. Complainant was found in possession of killa no. 121/18/1/1 alongwith Rama, Sanjay, Dhanpati, Ram Kala and Ram Chander. They came in possession by making foundation and constructed four boundaries on it. When complainant has purchased land out of killa number no. 13 then how he can claim his possession on killa no.18. It has come in evidence in the cross examination of complainant that he has raised the construction after getting sanctioned from Municipal Corporation in this regard. Strangely, no such site plan or sanction letter has been tendered on file. Hence, in these circumstances, it is clear that complainant has purchased some share out of killa no. 13, whereas, he himself was in unauthorised possession of killa no. 18. It means that he himself is wrong doer and not approached the court with clean hands. Prima facie no evidence is available on file to connect the accused with the crime in question.

14. Moreover, the degree of satisfaction under section 245 Cr.P.C is different from, framing the charge on police report. As per this provision: if upon all the evidence referred to it in section 244, the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. In our case, no case against the accused is made out on the basis of evidence led by complainant. Hence, in this case complainant has failed to prove the allegation against the accused regarding criminal trespass and

offence under section 506 IPC. Hence accused are discharged. Their bail bond and surety bonds stand discharged. File be consigned to record room after due compliance.

The petitioner, therefore, preferred an appeal before the Lower Appellate Court which was also dismissed by the Lower Appellate Court vide judgment dated 18.09.2017.

Counsel for the petitioner has submitted that he had filed an application for leading additional evidence before the Appellate Court to produce on record the demarcation report dated 28.10.2010, which was declined on the ground that the pre-charge evidence was closed on 15.04.2015 and this report came in existence much prior to closing the pre-charge evidence, and thus, the same cannot be allowed to be taken on record, after about 4 ½ years of the demarcation as it was in the knowledge of the petitioner/complainant and he never moved any application before the trial Court while leading the pre-charge evidence.

Counsel for the petitioner has further argued that the foundations which were constructed by the petitioner were illegally demolished by the respondents by encroaching upon Killa No.13 and since the petitioner is a purchaser of this land, prima facie he has proved that he was in possession of the same.

After hearing the counsel for the petitioner, I find no ground to set-aside the well-reasoned findings recorded by both the Courts below as it has been held by both the Courts below that as per the demarcation report dated 23.12.2019, the possession of the respondent/accused was found at the spot where the petitioner has tried to raise the construction. The Courts below further held that there is no

eye-witness of the alleged occurrence and in fact, the petitioner being a co-sharer with the accused persons cannot take exclusive possession without resorting to the partition. It is also found that FIR No.91 dated 14.06.2009, which was got registered by the petitioner on due verification was cancelled by the police as the petitioner was not found in possession of the land.

In view of the above, I find no ground to interfere in the findings recorded by both the Courts below that the petitioner was, in fact, found in possession of Khasra No.18 whereas the alleged construction was raised on Khasra No.13, which was found in possession of the accused persons. Even, at the time of the alleged sale deed, possession of no specific portion of the land was given to the petitioner/complainant and in absence of any independent evidence to prove that any loss was caused by the respondents, there is no merit in the petition.

The petition is dismissed accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

22.07.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No