

CRM-M No. 39756 OF 2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

1. CRM-M No.39756 OF 2017

Subhash and othersPetitioners

versus

State of HaryanaRespondent

2. CRM-M No.41163 of 2017

Date of Decision: 04.02.2019

Subhash and othersPetitioners

versus

State of HaryanaRespondent

CORAM HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present Mr.S.S.Sahu, Advocate for the petitioners.
Mr. Yashwinder Singh, DAG, Haryana.

MAHABIR SINGH SINDHU, J (ORAL)

As the property in dispute as well as the parties are same, therefore, aforementioned CRM-M No.39756 of 2017 and CRM-M-41163 of 2017 are being disposed off by the common order.

CRM-M-39756-2017 has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C')for quashing of the FIR No. 233 dated 22.07.2014 under Sections 188, 447, 147 and 149 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Bhattu Kalan, District Fatehabad and all consequent proceedings arising there from.

CRM-M-41163-2017 has been filed under Section 482 Cr.P.C for quashing of the FIR No.203 dated 18.06.2014 under Sections 188, 447 and 34 IPC registered at Police Station Bhattu Kalan, District Fatehabad and

all consequent proceedings arising there from.

Separate replies by way of affidavit of Gurdial Singh, Deputy Superintendent of Police, (City), Fatehabad on behalf of respondent, already filed in the registry are taken on record.

The facts are being taken from CRM-M-39756-2017.

It is contended by learned counsel for the petitioners that FIR in question is absolute misuse of the process of the Court as in view of the bar under Section 195 Cr.P.C, no FIR can be registered in the matter. In support of his contention, he has placed reliance upon the judgment of this Court in **Jiwan Kumar v. State of Punjab and others 2009(1) RCR (Criminal) 415.**

On the other hand, learned State counsel, on instructions from ASI Jai Lal, has contended that in this case the entire prosecution evidence is over and on account of the stay granted by this Court, trial is held up.

Heard learned counsel for both sides and perused the paper book.

The brief allegations in the FIR which was registered on the basis of a written complaint made by Tehsildar, Fatehabad are that an order dated 18.06.2012 was passed by Sub Divisional Magistrate, Fatehabad (for short 'SDM') under Section 145 Cr.P.C and Tehsildar, Fatehabad was appointed as Receiver. Consequently, possession of the property in dispute was handed over to him to avoid any untoward incident as well as for maintenance of law and order. Thereafter, a report dated 25.11.2013 was received from Halka Patwari to the effect that out of land comprising in khasra no. 107//19(8-0), 20(8-0), over approximately 36' x 78' was encircled and constructed by Gaushala Construction Committee despite the

proceedings under Sections 145 and 146 Cr.P.C and the Tehsildar, Fatehabad also submitted a report to SDM in this regard. Further alleged that on an earlier point of time CWP No.2220 of 2013 titled as Brij Bhushan etc.v. State of Haryana was filed which was decided by this Court vide order dated 04.09.2013 and Superintendent of Police, Fatehabad was directed to take action against the person whosoever is found violating the proceedings under Section 145 and 146 Cr.P.C. Despite the above factual position, the present petitioners have constructed shed for Gaushala over the land in question and thus they have violated the order dated 18.06.2012 and with these allegations the FIR in question was registered.

Perusal of the FIR as well as paper book reveals that on an earlier occasion CWP No.2220 of 2013 titled *Brij Bhushan etc. v. State of Haryana* was filed and decided the same by Division Bench of this Court on 04.09.2013 and operative part of that order is extracted here under:-

“Under the circumstances, we dispose of this writ petition by giving liberty to both the parties to approach the Sessions Judge, Fatehabad for appropriate orders in future. Till such time any application is moved, both the parties are restrained from entering the land which is subject matter of provisions of Sections 145 and 146 Cr.P.C. Directions are issued to the S.P, Fatehabad that if any of the parties violate the directions given by this Court, necessary action be taken against the concerned party forthwith. The liberty shall remain with the Gram Panchayat and the private respondents to avail remedy regarding title of the land in dispute as per law.”

Perusal of the above order clearly reveals that specific directions were given to the S.P, Fatehabad that if any of the parties violate the order of this Court, necessary action be taken in this regard. Therefore, in compliance of the order dated 04.09.2013, passed by this Court, FIR in question was registered and that is the subject matter of challenge in the present petition.

The argument raised on behalf of the petitioners that no FIR can be registered in view of the bar created by Section 195 Cr.P.C is not acceptable for the reason that present FIR has been registered not only under Section 188, but under Sections 447, 147 and 149 IPC, as well. There is no quarrel that offence under Sections 147 / 149 and 447 IPC are cognizable and in view of the provisions under Section 154 Cr.P.C, an FIR can be registered in a cognizable offence and the bar under Section 195 Cr.P.C cannot be pressed into service to that effect.

It is necessary to mention here that in view of the provisions of Section 155(4) Cr.P.C, where a case relates to two or more offences, of which at least one is cognizable, then case shall be deemed to be a cognizable case notwithstanding that other offences are non cognizable and Section 155(4) Cr.P.C reads as under:-

“155. Information as to non cognizable case and investigation of such cases.

(1) xxxx

(2) xxxx

(3) xxxx

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

Thus, in view of the provisions of Section 155(4) Cr.P.C, reproduced hereinabove, it is apparently clear that if there are two or more offences and atleast one is cognizable then the case shall be deemed to be a cognizable case and in that eventuality FIR under Section 154 Cr.P.C can be registered in a non cognizable offence, as well. Thus, the argument of the petitioners in this regard is rejected.

Judgment cited in **Jagdish and other's case (supra)** is not applicable for the simple reason that in that case FIR No.275 dated 01.12.2014 was registered under Section 188/34 IPC only and in view of the bar created under Section 195(1) Cr.P.C, the FIR was held to be impermissible. But in the present case, as discussed hereinabove, the FIR has been registered under Sections 188/447/34 IPC, therefore, petitioners cannot be allowed to take any benefit of the judgment referred on their behalf.

Undisputedly, in the present case charges were framed way back on 18.11.2014 under Sections 147, 188 and 447 IPC and even the entire prosecution evidence is over, therefore, on that count also, quashing of the FIR, at this stage, would not be appropriate for this Court while exercising powers under Section 482 Cr.P.C.

Keeping in view the above, there is no merit in both the petitions and the same are dismissed.

Learned trial Court will proceed with the matter expeditiously.

The aforesaid observations may not be construed as an expression of opinion on the merits of the case pending before the learned trial Court.

A copy of this order be placed on the file of connected case
numbered above.

04.02.2019
mamta

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No