

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

CRM-M-5528-2013 (O&M)

Date of decision: July 08, 2019

Surjit Kaur and others

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navkiran Singh, Advocate
 for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Vivek K. Thakur, Advocate
for respondent No.3.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer made in this petition filed under Section 482 Cr.P.C. is for quashing of FIR No.106 dated 5.12.2012 registered under Sections 379/447 IPC at Police Station Bholath, District Kapurthala and all other subsequent proceedings arising therefrom.

Brief facts of the case are that Harbans Singh and Baldev Singh are the real brothers and they were holding 86 Kanals 18 Marlas of land situated in village Akala, Police Station Bholath, District Kapurthala. Harbans Singh had sold 12 Kanals of land out of his share to Harjinder Singh vide sale deed dated 29.12.1999 and also handed over the possession of the sold portion to him. After the death of the other brother Baldev Singh, his

wife Surjit Kaur also sold some land vide two sale deeds, i.e. the first sale deed dated 5.9.2005 for 9 Kanals 6 Marlas of land to one Amarjit Kaur and another sale deed dated 11.4.2011 vide which 03 Kanals 12 Marlas of land was sold to Amarjit Kaur.

It is admitted case of the parties that the partition proceedings regarding the partition of the land was pending between the parties and one more person, namely, Sukhjinder Singh had set up a claim of 17 Kanals 13 Marlas of land with the allegations that his father Jagtar Singh had also purchased some land from Harbans Singh and started claiming possession on the land, which, according to the petitioner, was in possession of Gurmej Singh and Amarjit Kaur.

Later on, on an application made by said Sukhjinder Singh, the Sub Divisional Magistrate, Bholath vide impugned order dated 30.9.2011 initiated the proceedings under the 145 Cr.P.C. regarding the disputed land, i.e. 35 Kanals 7 Marlas. Thereafter, on 6.12.2011 by the Sub Divisional Magistrate, Bholath appointed a Receiver under the provision of Section 146 Cr.P.C.

Thereafter, Sukhjinder Singh filed a criminal revision before the Court of Sessions, in which, on 9.5.2012, the following order was passed :-

“The parties are at liberty to cut the wheat crop in accordance with their respective shares as recorded in the copy of the Jamabandi for the year 2008-09. In case, they have any apprehension of the any dispute/breach of peace, then in that eventually, they are at liberty to approach the concerned police for help for cutting the crop of their respective shares, stated to be standing over

the suit land as well as over the land at detailed in the above said copies of the Jamabandi.”

Counsel for the petitioner submits that thereafter, on 16.11.2012, the Sub Divisional Magistrate, Bholath again initiated the proceedings under Section 145 Cr.P.C. qua 35 Kanals 7 Marlas of land and appointed a Receiver vide impugned order dated 16.11.2012.

Counsel for the petitioner, in the meantime, the petitioner had harvested the wheat crop, according to their share, however, the impugned FIR No.106 dated 5.12.2012 was got registered by the Sub Divisional Magistrate, Bholath under Sections 379 and 447 IPC in Police Station Bholath, District Kapurthala on the allegations that though the Receiver has taken the possession yet the petitioners have harvested the wheat crop and, therefore, they have committed the offence punishable under Sections 379 and 447 IPC.

Counsel for the petitioners has sought the quashing of the FIR on the grounds that, in fact, it is purely a civil dispute, in which the partition proceedings were pending and in pursuance to the Section 145 Cr.P.C. proceedings initiated by the Sub Divisional Magistrate on 16.11.2012, the possession was never delivered to the Receiver.

Counsel for the petitioners submitted that as per record the petitioners were in possession of the land and, therefore, there was no occasion for the police to invoke Sections 379 and 447 IPC. The counsel for the petitioners has further argued that vide order dated 9.5.2012, the Revisional Court has given a right to the petitioners to cut the wheat crop, which remained operative even for the subsequent crops, as the respondent-complainant never challenged that order before the appellate/ revisional

Court and, therefore, the permission to harvest the crop, as per their respective share remain operative.

Counsel for the petitioner has placed on record the photocopy of order dated 20.4.2013 passed by the Additional Sessions Judge, Kapurthala vide which the revisions filed by the petitioners and order dated 16.11.2012 initiating the proceedings under Section 145 Cr.P.C. by the Sub Divisional Magistrate, Bholath were set aside. The operative part of the order reads as under :-

“5. There is no dispute that Sukhjinder Singh etc. filed a suit for specific performance on the basis of an agreement dated 22.9.1998 against Harbans Singh and others and his suit was decreed on 2.4.2002 and appeal filed by Harbans Singh has been dismissed vide judgment and decree dated 7.8.2003 and on the basis of judgment and decree dated 2.4.2002, sale deed has been executed in favour of Sukhjinder Singh through the process of Court, but possession has never been delivered to him through the process of Court. He purchased the property from revisionist Harbans Singh but has not concern with the land owned by Surjit Kaur and others. If a person got the decree of the Court in his favour and got the sale deed executed through the process of Court, the only remedy before that person is to get the possession through the process of Court and not illegally and forcibly. Jamabandi on the file shows that Harbans Singh and Surjit Kaur etc. are in possession over the property in dispute and Sukhjinder Singh appellant for initiating the proceedings under Section 145 Cr.P.C. has never came into possession over the property in dispute. He has the remedy to get the possession by way of partition and not illegally and

forcibly. He became a co-sharer in the property in dispute but he cannot disturb the possession of other co-shares till he get the possession through the process of Court. He became a co-sharer out of possession and he cannot disturb the possession of other co-sharer by invoking the provisions of Section 145 Cr.P.C. Hon'ble Punjab and Haryana High Court in 2008(4) RCR (Criminal) 466 Jasvir Singh and others Vs. State of Punjab and others held that the parties are co-owners, proceedings under Section 145 Cr.P.C. cannot be initiated. It is settled principle of law that co-sharer out of possession has a remedy of partition to get the possession of his separate share. He has the remedy to claim mesne profits from the other co-sharer for use and occupation of his share, but he has no right to initiate proceedings under Section 145 Cr.P.C. The authority cited by the learned counsel for the respondents 1984(1) RCR (Criminal) page 617 Kartar Singh Vs. Pritam Kaur is not applicable to the facts and circumstances of the present case in view of latest law laid down by our own Hon'ble High Court in 2008(4) RCR page 466. Moreover, the authority cited by the learned counsel for the respondent is distinguishable from the facts of the present case because in that very case revision was preferred only against order of attachment, whereas in the present case revision has been moved against initiation of proceedings under Section 145 Cr.P.C. Sukhjinder Singh respondent though get the decree from the Court and got the sale deed executed in his favour, but he remained out of possession. Instead of getting the possession of his share through the process of Court, he got initiated the proceedings under Section 145 Cr.P.C. which shows that he wanted the possession of the land indirectly. Meaning thereby, he does not want

the other co-sharer to cultivate the land until and unless he get the possession of his share. So in my view, initiation of proceedings under Section 145 Cr.P.C. are totally wrong. Therefore, the revisionists have a *prima facie* case in their favour and balance of convenience also lies in their favour and they will also suffer irreparable loss and injury, therefore, in view of my above discussion, operation of order dated 16.11.2012 is hereby stayed.

6. In view of the above discussion, both revision petitions filed by the revision petitioners are accepted. The impugned order dated 16.11.2012 is hereby set aside and proceedings under Section 145 Cr.P.C. are stopped. Copy of the order be placed in Criminal Revision titled as Harbans Singh Vs. Sukhjinder Singh and others. Record of the lower Court be set back alongwith copy of this order. The revision files be consigned to the record room.

Announced :
Dated : 20.4.2013

Sd/
(Gurmit Kaur)
Addl. Sessions Judge
Kapurthala”

The copy of the same is taken on record as Mark ‘X’.

Counsel for the petitioner has further submitted that on 9.8.2017 a specific direction was given to the Tehsildar, who was appointed as a Receiver, in pursuant to the order dated 16.11.2012 and was directed to take the possession of the property, to submit a report whether he ever came in actual physical possession of the land in dispute.

As per the affidavit dated 17.11.2017 filed by the Naib

Tehsildar-cum-Receiver, District Kapurthala, it is submitted as under :-

“2. That the possession of the disputed land was not taken by the Receiver due to the status quo order passed by the learned Sessions Judge, Kapurthala. The possession is lying with the concerned parties. Copy of the jamabandi for the year 2013-14 of the disputed land of village Akala is attached (R-2A)”

Counsel for the petitioner, thus, argued that once it is admitted by the Tehsildar/Receiver that he never came in possession of the property as in the intervening period an order of *status quo* was passed by the Revisional Court where the petitioner has filed a revision and, ultimately, the said revision petition was allowed on 20.4.2013 dropping the proceedings under Section 145 Cr.P.C., there was no occasion for the Sub Divisional Magistrate to register the FIR with the allegation that the petitioners had harvested the paddy crop as at no point of time the possession was taken from the petitioners and they continued to be in possession of the land in dispute.

Learned State counsel, on instructions from ASI Amarjit Singh could not dispute the factual position, on the basis of the affidavit filed by the Naib Tehsildar-cum-Receiver and also could not dispute that vide order dated 30.4.2013 when the revisional Court has finally set aside the order dated 16.11.2012 vide which the Section 145 Cr.P.C. proceedings were initiated for the second time.

Learned counsel appearing for the private respondent has, not filed any reply to the petition though it was pending since 2013 and could not dispute the passing of the orders which have been passed by the Courts below.

In view of the submission made by counsel for the petitioners and the order dated 20.4.2013 passed by the Additional Sessions Judge, Kapurthala as well as the specific stand taken by the Naib Tehsildar-cum-Receiver in his affidavit dated 17.11.2017, it is apparent that the petitioners were continuously in possession of the land from where they have harvested the paddy crop and, therefore, they have not committed the offence punishable under Sections 379/447 IPC for which the FIR has been registered.

In view of the judgment of Hon'ble the Supreme Court passed in **State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991(1) RCR (Criminal) 383**, wherein it has been held that where the proceedings in pursuance to a criminal complaint/FIR is nothing but misuse of process of law, the FIR/complaint can be quashed, this petition is allowed. Consequently, FIR No.106 dated 5.12.2012 registered under Sections 379/447 IPC at Police Station Bholath, District Kapurthala and all the subsequent proceedings arising therefrom are ordered to be quashed.

The petition stands disposed of, accordingly.

July 08, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No