

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20905-2019

Date of decision: 29.05.2019

Dinesh Kumar and others

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Yash Dev Kaushik, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of anticipatory bail in FIR No.195 dated 16.04.2019 under Section 379 of the Indian Penal Code (for short 'IPC'), registered at Police Station Hodal, District Palwal.

Learned counsel for the petitioners submits that as per allegations in the FIR, got registered by complainant Ravi Dutt Sharma, it is stated that he is in possession of 59 kanals 13 marlas of land and the accused persons have forcibly cut his standing crops and have taken away the same by committing the offence of theft. It is further stated that the accused persons namely Bhogi, Dinesh Kumar, Harsh Kumar, Tirlok and Mange Ram are having criminal background and they are involved in a case under Section 302 IPC.

On 17.05.2019, while issuing notice of motion and granting interim anticipatory bail to the petitioners, it was noticed that vide order dated 21.02.2017, the Civil Court had passed an order of status quo regarding the possession and therefore, it will be a debatable issue as to who was in possession of the property. Learned counsel for the petitioners has argued that in fact the land is un-partitioned and the petitioners are in possession of the property.

Learned State counsel, on instructions from the Investigating Officer and assisted by learned counsel for the complainant has however opposed the prayer for bail.

Learned counsel for the complainant has argued that even on an earlier occasion i.e. 10.10.2018, the petitioners had cut crops of the complainant, for which an FIR No.81 dated 19.02.2019 has been registered and in the similar manner, again they have cut his crops. It is further submitted that in fact, vide Civil Court decree dated 01.02.2014, suit for possession by way of specific performance of agreement to sell dated 16.08.2005, filed by complainant Ravi Dutt Sharma, was decreed and in execution of the said decree, the sale deed was executed in his favour and thereafter, in compliance of the order dated 08.04.2016 passed by the Civil Court, possession of the land was delivered to the complainant on 18.04.2016, vide a rapat rojnamcha, entered by the revenue officials.

Learned counsel for the complainant has further argued that even sale deed of the land was executed in favour of complainant Ravi Dutt Sharma on 04.12.2015, in execution of the aforesaid decree. It is further argued that the petitioners have concealed the material fact that in another suit filed by them

against Bhogi Ram and complainant Ravi Dutt Sharma, praying for setting aside the aforesaid sale deed, the application filed by the petitioners under Section 39 Rules 1 & 2 CPC was dismissed by the Civil Judge on 31.05.2016, by making the following observations: -

“I have heard the ld. Counsel for the both of the parties and gone through the case file thoroughly.

After hearing the arguments of ld. Counsel for both of the parties and going through the record produced on case file, it comes to the considered opinion of this Court that here plaintiffs have alleged that suit property is the ancestral-cum-coparcenary property and plaintiffs have right by birth, but this contention of plaintiffs is not tenable because learned counsel for the plaintiffs has not putforth even a single document regarding the nature of the suit property. In other words, if there is any such document regarding the ancestral and co-parcenary nature of suit property then it would be produced before the court but here it did not happen. Moreover, defendant No.2 has purchased the suit property from defendant no.1 as the suit for specific performance of contract filed by defendant no.2 is already decreed in the favour of defendant no.2 qua the suit land. Furthermore, whether the defendant no.1 was in the need of alienating the suit land to the defendant no.2 or not is a matter of evidence but at this stage such the authenticity of judgment and decree dated 1.2.2014 qua the suit land passed by Sh. Vikas Gupta, Additional Civil Judge (Senior Division) Hodal and the execution petition dated

18.12.2015 in favour of defendant no.2 cannot be considered as a futile exercise. At this stage contentions of ld. Counsel for the plaintiffs do not attract the attention of this court with fully satisfaction.

So it is usually to say that prima facie case is not made out in the favour of the plaintiffs and the balance of convenience also not tilt in their favour and irreparably loss will not be caused to them if injunction prayed is not granted. So, application filed under Order 39 Rule 1 and 2 CPC stands dismissed thereof and disposed of accordingly.”

Learned counsel for the complainant has thus argued that despite the fact that the Civil Court, in execution of the decree dated 01.02.2014, has got the sale deed executed in favour of the complainant on 08.04.2016 and the possession was delivered by the revenue officials on 18.04.2016, the petitioners are repeatedly interfering in possession of the complainant and on that account, on an earlier occasion, aforesaid FIR No.81 was registered and again, they have forcibly cut the standing crops of the complainant and have committed the offence of theft and therefore, they are habitual offenders. It is also submitted that petitioner No.1 has been convicted in an FIR under Section 302 IPC and his sentence has been suspended and during the period of bail, he has extended threat to the complainant.

After hearing learned counsel for the parties and going through the record and considering the allegations levelled against the petitioners, it cannot be held that it is a case of purely civil nature. Though in an another suit, order of status quo regarding the possession is passed, however, complainant Ravi

Dutt Sharma is not a party to the suit.

Primarily, it is apparent that the complainant is owner in possession of the property and the petitioners have repeatedly committed the theft of crops standing over his land, after harvesting it in night as even on an earlier occasion, a similar FIR was registered. Therefore, considering the serious allegations against the petitioners, I find no ground to grant anticipatory bail to the petitioners.

Dismissed.

29.05.2019
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No