

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51472-2018 (O&M)
and other connected cases
Date of Order:27.08.2019

Rajinder Kumar

..Petitioner

Versus

State of Haryana

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. N.S.Shekhawat, Advocate,
for the petitioner (in all petitions)

Mr. Manish Bansal, DAG, Haryana and
Mr. Anmol Malik, AAG, Haryana.

Mr. Gaurav Chopra, Advocate,
for the complainant.

ANIL KSHETARPAL, J.

By this order CRM-M-51472 and 51944 of 2018 and CRM-M-15187 and 15530 of 2019 shall stand disposed of.

Criminal Misc. No.M-51472 and 51944-2018 have been filed with a prayer to grant pre-arrest bail to Rajinder Kumar, Patwari of the area in FIR Nos.100 and 125. It is not disputed that investigations are complete, challan has been filed. In such circumstances, custodial interrogation of the petitioner is not required. Hence, the interim protection granted to the petitioner-Rajinder Kumar by this Court on 22.11.2018 and 28.11.2018 is made absolute.

Remaining two petitions i.e. CRM-M-15187 and 15530 of 2019 have been filed under Section 482 Cr.P.C., seeking quashing of FIR No.100,

registered under Sections 406/409/420/467/468/471/180/201/120B IPC and FIR No. 125, registered under Sections 406/420/467/468/120B IPC, at Police Station Mahesh Nagar, District Ambala, the final report submitted by the police after investigation and consequential proceedings arising therefrom.

This court has heard learned counsel for the parties at length.

During the pendency of the petitions, report of the concerned Tehsildar/revenue official was sought. Pursuant to the aforesaid report submitted by the revenue official, Superintendent of Police, Ambala was also directed to file status report.

Learned counsel for the petitioner(s) has argued at length and has submitted that no offence is made out even if all the allegations/averments in the FIRs and the final report are taken as correct even for argument sake. He submitted that late Sh. Thath Singh was owner of land little bit more than 13 marlas in khasra no.32/3. Whereas on careful examination of the various sale deeds executed by late Sh. Thath Singh, it is apparent that he sold more than his entitlement.

On the other hand, learned counsel for the respondent-complainant had submitted that family of late Sh. Thath Singh consisting of Thath Singh, Hakam Singh and Smt. Vidya Wanti were owners of 1/4th share in land comprised in khewat no.13, total measuring 173 kanals and 3 marlas. He submitted that the argument of learned counsel for the petitioner (s) that the status of late Sh. Thath Singh as co-sharer is to be seen with reference to a particular khasra number is erroneous because the concept of a co-owner is always in a joint khewat and not in a particular rectangle number or khasra number. Hence, he submitted that since the family of late

Sh. Thath Singh were owners to the extent of 1/4th share as per jamabandi of the year 1980-81, therefore, the share of late Sh. Thath Singh could not be restricted to a particular khasra number.

He further drew attention of the Court to the final report submitted by the police after investigation, wherein it has been found by the police that the relevant pages of the record maintained in the office of Sub-Registrar with regard to the sale deeds executed in the year 1984 has been removed in order to conceal the actual facts. He further drew attention of the Court to the fact that the Investigating agency after examining the documents have found that two sale deeds have been registered with one number i.e. 6516 and thereafter in order to conceal the fraud played, one sale deed was assigned 6516 and second was 6516A which was not permissible as per registration manual.

The jurisdiction of the High Court while deciding petitions under Section 482 Cr.P.C. is very limited. Such jurisdiction can only be exercised when no case is made out from the reading of the final report.

In this case, this court finds that it is not possible for this Court to conclude on the basis of material placed on file that no case is made out against the petitioners. Petitioners have also failed to prove that the proceedings initiated are the abuse of the process of Court. The argument of learned counsel for the petitioners with reference to the share of late Sh. Thath Singh in a particular khasra number is misplaced. The concept of co-shares is always with reference to khewat/khata number as referred to or recorded in the revenue record. A particular killa/khasra number is not a unit for determining share of a co-owner.

The petitioners has very heavily relied upon a judgment passed

by Hon'ble the Supreme Court in the case of *Md Ibrahim and others vs. State of Bihar, (2009) 8 SCC 751* to contend that the first informant have no locus standi.

This Court has carefully read the judgment. In the aforesaid judgment, the Hon'ble Supreme Court held that the owner of a property which has been sold by another treating it to be belonging to him (another) has no locus to file proceedings under Sections 415 and 420 IPC. The aforesaid judgment with greatest respect is not applicable to the facts of the present case. In both the cases, first information report has been lodged by the persons who claim to be co-sharers in the joint khewat. Allegations are not only with regard to the sale of property but also with regard to a fake sale deed in the year 1984, removal of the record from the office of the Sub-Registrar and forging of various power of attorneys/agreement to sells.

In view of the aforesaid, this Court does not find that criminal proceedings initiated can be quashed in exercise of powers under section 482 Cr.P.C., at this stage. Accordingly CRM-M-15587 and 15530 of 2019 are disposed of with liberty to the petitioners to take all possible defences, as are permissible under law, before the Court below.

Needless to observe that any observations made by this Court while passing this court shall not bind the trial court and trial court decide the cases independently without being influenced by the present order passed by this court.

27th August, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No