

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

**CRM-M No.9944 of 2016 (O&M)
Date of decision : 26.02.2019**

Ajay Kumar & ors.

..... Petitioners

versus

Kelawati & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Amit Chaudhary, Advocate
 for the petitioners.

 Mr. Abhishek Yadav, Advocate
 for respondent No.1.

 Dr. Sushil Gautam, D.A.G., Haryana.

AJAY TEWARI, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of Criminal Complaint No.233-I of 2013 dated 17.09.2013 titled as Kelawati Vs. Ajay Kumar and others, under Sections 147/149/447/427 IPC and Section 3 of SC & ST Act, summoning order dated 06.08.2015 under Sections 427/447 IPC and order dated 08.02.2016 alongwith all subsequent proceedings arising therefrom .

The case of respondent No.1 in the complaint was that the petitioners had encroached upon her land and had forcibly cultivated the same. On this basis the petitioners were summoned.

Counsel for the petitioners has argued that one month prior to the alleged occurrence the father-in-law of the complainant had sold the

land to the petitioners. Thereafter respondent No.1 had also instituted a civil suit which was dismissed and the counter claim of the petitioners was allowed and the civil court unequivocally held that the petitioners were the owner of the land.

Counsel for respondent No.1 is not in a position to deny these factual assertions but states that the proper remedy was a revision under Section 397 Cr.P.C. and not the present petition whereas the counsel for the petitioners has argued that this is an abuse of process of law and therefore, this Court should not shut out the petitioners on this technilistic plea.

Learned Deputy Advocate General, on instructions from ASI Sher Singh has also accepted these factual assertions.

In my considered opinion, the petition has to succeed. No doubt the petitioners had a remedy but one such abuse of process of law is brought to the notice of the High Court, it can not be presumed that the Court should remain silent.

Consequently, the petition is allowed. The summoning order and the complaint are quashed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

26.02.2019
Pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No