

**CRM-M-25546-2019(O&M)
and connected case**

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

1. CRM-M-25546-2019(O&M)

Resham Lal alias Resham Lal Loey

.....Petitioner

Versus

State of Punjab and another

.....Respondents

2. CRM-M-25539-2019(O&M)

Kamaljit Kaur and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

Date of decision: 13.12. 2019

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present:- Mr. Arun Takhi, Advocate for the petitioners
in both petitions.**

Mr. Hittan Nehra, Addl. AG, Punjab

Mr. Arnav Sood, Advocate for respondent No.2

ANIL KSHETARPAL, J.

By this judgment, two petitions i.e CRM-M-25546 of 2019 and M-25539 of 2019 shall stand disposed of as the facts, FIR in question and the consequential criminal proceedings in both the petitions are same. In these petitions filed under Section 482 Cr.P.C (hereinafter referred to as the 'Code') prayer is to quash FIR No.6 dated 27.2.2019 registered under

District Hoshiarpur.

Before proceeding further, it shall be appropriate to extract the relevant part of the FIR:-

“ Sir, it is submitted that I Jaswinder Kaur Loi w/o Late Shri Madan Lal is the resident of village Bilaspur Police Station Sadar District Hoshiarpur at present residing in Germany. That I had purchased a plot measuring 13-1/2 Marla of land out of total land measuring 27 Marla on Chandigarh Road Hoshiarpur which is my ownership, on which Jaswinder Singh s/o Gurdas Singh, his son Baljinder Singh and his mother Kamaljit Kaur w/o Jaswinder Singh s/o Gurdas Singh r/o House No. 465, L.S. Enclave, Sector 49-A, Chandigarh and Resham Lal s/o Parkash Ram r/o village Bilaspur at present r/o Germany with this common intention are trying to take illegal possession though mutation of this land is entered in my name, photocopy of the Fard is attached herewith. After the death of my husband Madan Lal, Resham Lal s/o Parkash Ram in collusion with his sister and brother in law have not paid Theka of the land in village and no rent of the Dhaba was paid. In connection with demolition of the building erected on this land Jaswinder Singh and his son Baljinder Singh, Kamaljit Kaur w/o Jaswinder Singh had entered into compromise with us, now they are backing out from the

said compromise also. Photocopy of the compromise is attached herewith. After taking required legal action against the above, I and my family be provided amount of Theka/rent of this land and after taking legal action against them, justice may be given to me. This complaint shall be pursued on my behalf by Kuldeep Kaur w/o Surjit Singh r/o village Bilaspur. With thanks, yours faithfully sd/- in English Jaswinder Kaur Loi w/o Late Shri Madan Lal r/o Village Bilaspur Police Station Sadar District Hoshiarpur at present r/o Schoppler Strass 18, 86154 Augsburg, German.”

Some undisputed facts are required to be noticed. A small family tree/genealogical table would facilitate understanding of inter-se relationship. The table is extracted as under:-

Parkash Ram		
Resham Lal	Madan Lal Jaswinder Kaur (married to Jasvinder Singh Bains) (widow of Madan Lal) (First informant)	Kamaljit Kaur Baljinder Singh

Madan Lal and Resham Lal were joint owners of the property in question. Petitioners claim that it is 2 kanals 4 marlas whereas respondent No.2-first informant claim that the joint property is 27 marlas. Be that as it may, as it would not affect the merits of the case. Both the brothers are alleged to have jointly constructed a Dhaba (eatry) with the name of Modern Dhaba. It is claimed by respondent No.2 that this Dhaba building was given

on lease by both the brothers to one Jagtar Singh whereafter it was given on

lease to Bahadur Singh and lease money was being equally shared by both the brothers.

Late Sh. Madan Lal unfortunately expired on 18.2.2014. Respondent No.2 –first informant alongwith her minor children left for Germany and is now settled there. Accused are Resham Lal, (brother in law of the first informant) , Kamaljit Kaur (sister in law of the first informant), her husband and son. As is clear from the reading of the FIR, there are three allegations against the accused:-

- i) The accused are trying to take illegal possession
- ii) The accused have not paid the lease money
- iii) Accused had entered into settlement but failed to comply with the same.

At this stage, it would be relevant to note civil litigation pending between the parties. First informant-Jaswinder Kaur alongwith her children filed a civil suit for permanent injunction restraining Resham Lal, and Balwinder Singh from disturbing her joint possession in the joint property. She also sought rendition of accounts of Modern Dhaba from the date of death of her husband till the filing of the suit. Kamaljit Kaur claiming to be tenant filed a civil suit for permanent injunction on 15.5.2016 in which an ex-parte injunction was granted by the civil Court which was also ordered to continue by a subsequent order dated 21.1.2019. First informant-Jaswinder Kaur alongwith her children have also filed a suit for separate possession by way of partition. Thereafter, first informant had lodged the FIR in question.

Now the stage is set to examine as to whether any offence is

made out against the petitioners or not? As noticed above, there are three allegations in the FIR in question. First is with regard to attempt of the petitioners to take forcible possession of the joint land. She herself admits that property is jointly owned by Resham Lal and respondent No.2- the first informant and her children. It is the case of the petitioners that Resham Lal had leased out this property to Kamaljit Kaur (his own sister) on 6.4.2018 with effect from 1.4.2018 on a monthly rent of Rs.10,000/- and who after spending huge amount on renovation, started running a family restaurant and food corner alongwith her son under the name of 'Laguna Pizzeria'.

Once respondent no.2 herself claims that she is settled in Germany since the time of death of her husband, obviously she is not in actual and physical possession of the property. Further Resham Lal is undisputed co-owner and there is no partition between the family members/co-owners. Hence, Resham Lal being co-owner is deemed to be in possession of every part of the joint property and his possession cannot be said to be illegal. Of course, the joint possession is subject to decree for partition as and when passed. Resham Lal claims that aforesaid property has been leased out by him in favour of Kamaljit Kaur, his sister, who is also sister-in-law of Jaswinder Kaur- first informant. In such circumstances, not only the first allegation is factually incorrect, no offence under Section 448, which provides for offence on account of house trespass is made out. Learned counsel for respondent no.2 also fairly conceded that offence under section 448 is not made out.

Second part of the allegations in the FIR are that she has not been paid her share of the rent. Non-payment of her share of the rent is also

not a criminal offence. The remedy for the respondent no.2 is to file a suit for recovery of the amount, which has already been filed by seeking rendition of accounts.

Next part of the allegation is that the settlement is not being honoured. A copy of the alleged settlement has been annexed as Annexure R-2/1. In the aforesaid settlement, it has been agreed that Baljinder Singh can raise construction on 21 marlas land which is in the share of Resham Lal and remaining 21 marlas land would fall in the share of Jaswinder Kaur and he would vacate the same. Thereafter, once she get the possession she will withdraw her suit. Even the alleged failure to comply with the terms of the aforesaid compromise/settlement does not give rise to any criminal offence.

Learned counsel for respondent no.2 has tried to project that offences under Section 427 IPC and Section 506 IPC are made out. Section 427 provides for mischief causing damage to the amount of Rs.50/-. Section 427 IPC is extracted as under:-

“427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

On careful reading of the phraseology used in the aforesaid Section, it is apparent that the offence under Section 427 IPC is also not made out. Only allegation is that in place of old building which was constructed jointly, a new building has been constructed consisting of family

restaurant. Thus, by constructing a family restaurant there has been value addition. There are no averments, how first informant has suffered damage. Still further Resham Lal is co-owner of the property. The restaurant constructed is not on the entire land. In such circumstances, no criminal offence has been committed by Resham Lal.

Learned counsel for the respondent no.2 further refers to Section 506 IPC which is punishment for criminal intimidation. Criminal intimidation has been defined in Section 503 IPC which is extracted as under:-

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

On careful reading of Section 503 IPC, it transpires that the offence under section 506 IPC is also not made out against the petitioners-accused. From the reading of the FIR there are no allegations that the accused have threatened to cause any injury to her, individually or to her reputation or to her property. Still further, the threat to cause any injury to the property is not made out in the present case, particularly, when property is joint between the parties and a new restaurant has been constructed.

Keeping in view the aforesaid facts, this Court is of the clear view that dispute between the parties is essentially of civil nature and three civil suits are already pending between them. Still further, no criminal offence, as sought to be projected, is made out against the petitioners. Continuation of criminal proceedings shall result in abuse of the process of law.

Hence, this Court finds that these are fit cases for exercise of jurisdiction under Section 482 Cr.P.C to quash the FIR and the consequential proceedings. Both the petitions are allowed. Consequently, FIR No.6 dated 27.2.2019 registered under Sections 448, 506, 427, 120-B IPC at Police Station NRI, Hoshiarpur, District Hoshiarpur alongwith all consequential proceedings are quashed, qua all the petitioners.

13.12. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No