

CRM-M-48403-2019
Date of decision : 09.12.2019

versus

SUNITA NAGPAL
2019.12.16 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

Hakam Singh, as per the complainant, is stated to have been wrongly confined by accused No.1 and 2 under a conspiracy to usurp 16 acres of agricultural land, situated in village Nagoki.

It has further been averred that the petitioner and her son are selling intoxicants and are of criminal nature and have kept the father of the complainant unconscious by giving him intoxicants forcibly, so that he may not resist them.

Yet further, it has been stated that the petitioner and her son got transferred 16 acres of land in their favour by committing a fraud and by meting out threats, and also got 6 acres of land transferred to some other person, in respect of which they also usurped the money.

On the evening prior to the complaint having been lodged, the complainant alleged that on 08.09.2019 the petitioner and her son came in two vehicles, armed with guns, *lathis*, *dandas* and swords, threatening to kill the applicant and his mother, stating that since they were trying to rescue Hakam Singh from their clutches, they would be taught a lesson.

The complainant and his mother allegedly ran away upon apprehending a threat to their life, upon which they were chased but upon other persons coming to the spot, the petitioner and her son are alleged to have run away, still issuing threats.

When this petition came up for hearing on 15.11.2019, the following order was passed by this Court:-

“ Mr.Sidhu, learned counsel for the petitioner, submits that as a matter of fact even the civil suit instituted by the complainant and two others was dismissed by the learned Civil Judge (Senior Division), Sirsa, vide his judgment (Annexure P-1), with the appeal

against that judgment also having been dismissed.

However, the main allegation against the petitioner and her son in the FIR is that, allegedly, they have kept the father of the complainant in illegal confinement for long time and in fact got the land in question transferred to their names by keeping him intoxicated.

He next points to the affidavit stated to have been executed by the father of the complainant, i.e. Hakam Singh, (copy Annexure P-3), wherein it is stated that in fact it is his wife and son who beat him up, as a result of which he is living with his sister, Kuldeep Kaur, and nephew, Khushwant Singh, Kuldeep Kaur being the petitioner.

Upon query being put to learned counsel as to why then he was not produced before the investigating officer as had been recorded by the learned Additional Sessions Judge while dismissing the petition before him also filed under the provisions of Section 438 of the Cr.P.C., he submits that the police in fact is in collusion with the complainant and is therefore getting such statement recorded.

That being so, without making any further comment on the contentions aforesaid raised, let notice of motion be issued.

Mr.Pardeep Sharma, learned AAG, Haryana, accepts notice at the asking of the Court.

Two copies of the petition be handed over to him during the course of the day.

Adjourned to 22.11.2019.

The petitioner would produce the father of the complainant, i.e. Hakam Singh, before the learned Ilaqa Magistrate tomorrow itself, i.e. 16.11.2019, by 11.00 am, with the Ilaqa Magistrate to thereafter record an order as to the condition of Hakam Singh, including as to his mental state (of being intoxicated or not). She/he shall then summon the Investigating officer and ensure that the petitioner joins investigation.

The order to be passed by the learned Ilaqa Magistrate be put

up before this Court by the next date of hearing, by learned counsel for the petitioner.

Hakam Singh shall also be produced before this Court on the next date of hearing.

In the meanwhile, upon the petitioner joining investigation and complying with all conditions stipulated in Section 438(2) of the Cr.P.C., if she is sought to be arrested, she shall be released on bail, on her furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

A copy of this order be given to learned counsel for the petitioner, as also to learned State counsel, under the signatures of the Bench Secretary of this Court.”

Today, the report of the learned Additional Chief Judicial Magistrate, Sirsa, dated 19.11.2019, is on record, stating therein that the statement of Hakam Singh was recorded and as per the assessment of that Court, upon questions having been put to him, he appeared to be in a healthy mental state, with him also not being intoxicated.

As per his statement, he had been residing with Kuldeep Kaur and Khushwant Singh(stated to be the son of the petitioner) for the past 10 years, of his own will. That Court thereafter summoned the investigating officer to join Kuldeep Kaur in the investigation, with the investigating officer stating that there was no need to take bail bonds from Kuldeep Kaur as she had not been arrested. However, he had also submitted to the Additional Chief Judicial Magistrate that she had not cooperated in the investigation.

The investigating officer further informed that Court that he would appear before this Court on 22.11.2019 to give a report with regard to the non-cooperation by Kuldeep Kaur in the investigation.

The statement of Hakam Singh, as recorded in Hindi by that Court,

seen to be carrying his signatures(in Devnagri script), has also been annexed by the learned Additional Chief Judicial Magistrate, stating to the effect that he is living with his sister Kuldeep Kaur and Khushwant Singh for the past 10 years, of his own free will. It has further stated therein that he does not consume alcohol and 'believes in the Guru' and that he is in a normal mental state.

The turn of the case not having come up on 22.11.2019, it was adjourned 'by order' till today, with the aforesaid Hakam Singh also present in Court, as identified by Mr.Sidhu, learned counsel for the petitioner, with his identity not doubted by even learned counsel for the complainant.

This Court has also called him up front and questioned him as to whether he is under any pressure from any body, to which he has replied in the negative and has in fact stated the same thing as he did before the learned Additional Chief Judicial Magistrate, Sirsa, to the effect that he has been staying with his sister for the past 10 years. Upon further query to him, he has also stated that he does not wish to go back to his wife and children as (allegedly) they used to beat him when he used to live with them.

He has answered the questions fully cogently, but whether he was earlier consuming any intoxicants or not, is not being commented upon by this Court.

Be that as it may, admittedly a decree by a civil court was passed on November 30, 2015, in a civil suit instituted by Manjeet Singh, Inderjeet Singh and Sandeep Kaur (Inderjeet Singh being the complainant in the FIR in question presently), seeking therein a decree for a declaration to the effect that the land owned and possessed by Hakam Singh (who was defendant no. 1 in that suit) be declared to be in the ownership and possession of the plaintiffs,

with that suit having been dismissed on November 30, 2015.

The plaintiffs therein are stated to have filed an appeal against that judgment and decree which was 'dismissed as withdrawn' on 04.09.2017, by the learned Additional District Judge, Sirsa, with the following order passed:-

“ File taken up today as 2.09.2017 declared holiday on account of Id-ul-Zuha vide Notification No.199-201 & 200 Genl./14XVII.3,dated 16.12.2016 conveyed vide Endst.No. 1297/Spl. Genl/XVII.3,dated 1.09.2017.

The case was fixed for arguments. Counsel for the appellants has made a statement that matter has been compromised and respondents have given assurance that they will transfer the land in favour of appellants and the appeal may be dismissed as withdrawn.

Heard. In view of the statement of the counsel for the appellants recorded separately, the present appeal is hereby dismissed as withdrawn. File be consigned to the record room. LCR be sent back.”

However, learned counsel for the complainant submits that possession of in fact 5 acres of land was handed over to the complainant and his family, but with the ownership of the said land not having been transferred to their names. Thus, in respect of a compromise stated to have been reached between the parties, the complainant in the FIR and his mother are stated to have again instituted a civil suit, which is stated to be pending in the competent Court.

That being so, without making any comment whatsoever on the merits of the case, which is obviously a matter of civil litigation, but with Hakam Singh having stated both, before the learned Additional Chief Judicial Magistrate, Sirsa, as also before this Court today, to the effect that he has not

been held against his will in the house of the petitioner and that in fact he does not want to go back to the house of his son and his wife, i.e. the complainants, but would like to go back to his sister's house, without making any comment on the actual merits of the contentions of the complainant, that (allegedly) the petitioner and her son (possibly along with others) had come to their house and had threatened them, which would be subject matter of investigation, the basis of the FIR being that Hakam Singh is being illegally detained, but that not having been corroborated by Hakam Singh, I see no reason as to why the order passed on 15.11.2019, admitting the petitioner to interim bail, be not made absolute.

Learned State counsel, on instructions from ASI Satish Kumar, submits that the petitioner in any case has joined the investigation and is not required for custodial interrogation presently.

Otherwise also, this Court has already commented on the merits of the 'case for bail', as above.

Consequently, without observing with regard to any application filed before the civil court, in respect of the mental condition of Hakam Singh etc., this petition is allowed, with the interim order dated 15.11.2019, being made absolute.

(AMOL RATTAN SINGH)
JUDGE

09.12.2019
sunita

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No