

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 48048-2018 (O&M)

Date of decision : 11.01.2019

Parminder Singh Sehgal

..... **Petitioner**

Versus

UT of Chandigarh and others

..... **Respondents**

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Sachit Kumar Sahijpal, Advocate for the petitioner
Mr.Rajiv Sharma, Addl. PP UT Chandigarh

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Petitioner Parminder Singh Sehgal has filed this petition under Section 482 of Code of Criminal Procedure, 1973 read with Article 226 of Constitution of India for quashing of FIR No.107 dated 11.6.2016 registered at Police Station Mauli Jagran under Sections 342, 447, 448, 506, 120B IPC along with all consequential proceedings.

FIR (Annexure P1) was got registered by Raj Kumar Mittal, who is dealing in the business of sale and purchase of property. Raj Kumar Mittal claimed that he purchased a farm house previously named as 'Panchwati' from Sh.Sanjay Jain vide sale deed No.5572 dated 20.12.2015 in the name of Kumar Builders. He is in possession of the same. On the day of occurrence i.e. 11.6.2016, at about 8. p.m., his workers informed that 5 people have entered the farm house forcibly and are giving life threats.

They are also throwing out all the stuff. Complainant, immediately called police on telephone No.100 and reached the spot with his son Navraj Mittal. He found that the gate of the property was locked from inside. Police also reached the spot. Police jumped the wall and arrested four persons from the spot. One person whose name was later on disclosed to be Parminder Singh Sehgal, (present petitioner) ran away taking cover of the darkness. Arrested persons disclosed their names as Gurlal Singh son of Jaswant Singh, Prince son of Imanuwal, Sarabjit Singh son of Lakhwinder Singh and Ravi Kumar son of Hukum Ram. Two motorcycles were also found in the farm house.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioner has contended that the present case has been registered to harass the petitioner. It is, in fact, a misuse of process of Court. It is stated that the background of case is that in fact the petitioner along with Sanjay Jain and his wife Shamita Jain floated a company in the name of M/s Premium Acres Private Limited. Sanjay Jain and his wife were inducted as full time Directors. In fact Mr.Sanjay Jain vide a resolution (Annexure P5) dated 18.1.2011 was authorized to purchase the property in the name of the said M/s Premium Acres Private Limited. However, he fraudulently, purchased the property namely 'Panchwati' in his name and in the name of his wife. Learned counsel has also referred to FIR No.64 dated 23.2.2015 registered at his instance under Sections 406, 420, 467, 468, 471, 474, 341, 120B IPC at Police Station Sector 17, Chandigarh (Annexure P6). Learned counsel for the petitioner has also referred to the notice dated 27.5.2015 issued by Senior Superintendent of Police UT Chandigarh (Annexure P8 colly) to the Estate Officer, Chandigarh, wherein

a request was made not to issue any NOC regarding transfer, sale of the property mentioned therein, which includes Panchwati, village Hallo Majra, Chandigarh, which is in dispute. In the said case, reference has also been made to the anticipatory bail application filed by Sanjay Jain, his wife and others, named in the FIR. Present complainant, namely, Raj Kumar Mittal has purchased the property from Sanjay Jain. Reference has also been made to the sale deed dated 4.10.2012, bearing registration no.3949 (Annexure P13) wherein the original owner of 'Panchwati farm' namely, Nirmal Takhat Baba, Budha Sahib Charitable Trust sold the property bearing Khasra No.305/1/1 (4-5), 302 (8-8) to Parminder Kaur Sehgal wife of Parminder Singh Sehgal. Further reference has also been made to the copy of the mutation which shows that the property bearing khasra No.306/1 (2-5) and 301 (1-18) was sold by Sanjay Jain to S.S.Kumar Builders. The property bearing khasra No.305/1/1 (4-5) and 302 (8-8) purchased by Parminder Kaur Sehgal wife of Parminder Singh Sehgal. The said 'Panchawati farm' is existing on all the said khasra numbers. In the sale deed, it is mentioned that possession has been delivered to the vendees. Learned counsel for the petitioner has also referred to the copy of the demarcation application dated 20.6.2016 (Annexure P18) which shows that on 6.7.2016 i.e. after the registration of the case, demarcation regarding 4 bighas 16 biswas land purchased by Parminder Kaur Sehgal could not be done out of khasra no.305/1/1 and 302. Learned counsel for the petitioner has contended that in fact Sanjay Jain cheated the present petitioner and in place of purchasing the property 'Panchwati farm' in the name of firm M/s Premium Acres Private Limited, he purchased the property in his personal name, for which, FIR is registered and despite the directions by the Senior Superintendent of

Police, not to issue NOC, the property was further sold. It is contended that the petitioner was in possession of the said property. Therefore, FIR is misuse of process of Court.

On the other hand, learned Addl. PP UT Chandigarh has argued that in this case, there was no demarcation. The property bearing different khasra numbers form part of Panchwati farm. Though, it is mentioned in the sale deed that some part of the land was delivered to the wife of the petitioner but in fact at the spot, there is no demarcation and property was in possession of Sanjay Jain, who delivered the same to Raj Kumar Mittal. The offence relating to trespass pertains to interference in the lawful possession. Further, the petitioner has no job to forcibly enter the property and throw away the articles lying therein. If he had any right, he could move the Civil Court or the authorities to enter the property and get the possession of the property recorded in his ownership. It is further contended that FIR was registered in the year 2016 on 11.6.2016 and now, after more than two years, the petitioner has come to the Court with undue delay for quashing of the same.

Learned counsel for the petitioner has also relied upon authority in the case of Suneet Gupta vs. Anil Triloknath Sharma and others, (2008) 11 SCC 670, wherein FIR was quashed on the ground that it is a civil dispute between the parties.

A perusal of the mutation shows that 'Panchwati farm' consisted of several khasra numbers i.e. Khasra Nos.306/1, 305/1/1, 301 and 302. Out of this, one parcel of land of khasra Nos.306/1 (2-5) and 301(1-18) was sold by Sanjay Jain to SS Builders i.e. the complainant party. Land of khasra No.305/1/1 (4-5) and 302 (8-8) was purchased by Parminder Kaur

Sehgal wife of the present petitioner. Though in the sale deed in favour of Parminder Kaur Sehgal, it is mentioned that the possession of the said khasra numbers purchased by her has been delivered to her but it appears that there was no actual demarcation at the spot as 'Panchwati farm' was one unit. It also comes out from the demarcation application (Annexure P18) that it was filed on 20.6.2016 by Parminder Kaur Sehgal for demarcation of her khasra numbers only after the registration of present FIR. Vide report dated 6.7.2016, it was reported that demarcation could not be done. The offences alleged are against possession. Therefore, it will be a question of fact as to whether the present petitioner along with the co-accused committed offences by entering into property in the exclusive possession of the complainant or the defence plea of the petitioner is to be accepted. Since, it is contentious issue, findings regarding the same are to be given after recording evidence. Therefore, there is no ground to quash the FIR.

Resultantly, the present petition stands dismissed.

11.01.2019

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

No