

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

253

CRM-M-462-2018

Date of decision: 04.02.2020

Dharamvir and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Surinder Gaur, Advocate
for the petitioners.

Mr. Arjun Singh Yadav, AAG, Haryana
for respondents No.1 to 6.

ARUN KUMAR TYAGI, J (ORAL)

The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for issuance of appropriate order/direction directing the respondents to protect the life and liberty of the petitioners and their family members. The petitioners have also sought direction to the respondents to take appropriate action on complaints dated 21.12.2017 and 25.12.2017 (**Annexures P-3 and P-4**).

The petitioners have filed the petition on the averments that there are about 200 families belonging to the Scheduled Caste community in village Sanghan, Tehsil and District Kaithal whereas the number of families belonging to the higher communities including Sikhs and Muslims is more than double. The Waqa Board is owner of 62 kanals of land in the village which is largely under unauthorised occupation of the above said higher communities. Land measuring 12 kanals was under occupation of the Scheduled Caste community for the

last about six decades. Since members of the Scheduled Caste community did not support the present Sarpanch for the Panchayat Election, the Sarpanch and his companions are nursing a grudge against them. In September, 2017, some anti-social elements in Sikh community of the village tried to dig earth from the land in their possession by using JCB Machine regarding which complaint dated 25.09.2017 was made to respondent No.3 but no action was taken by the civil or police administration. Encouraged by their inaction, the anti-social elements set the mounds of their cow dung cakes on fire in the night of 20.12.2017 as shown by photographs (**Annexure P-1**). The petitioners submitted complaints dated 21.12.2017 and 25.12.2017 (**Annexures P-2, P-3 and P-4**) but no action was taken on the same. Hence the present petition.

On notice, respondents No.1 to 6 have filed reply by way of affidavit of Satish Kumar, HPS, Deputy Superintendent of Police, Kaithal.

In their reply, respondents No.1 to 6 have mentioned by way of preliminary objection that there was illegal possession of the Waqf land of 'graveyard' measuring about 12 kanals out of 33 kanals comprised in Khewat No.150 situated in village Sangan, District Kaithal. In the year 2016, the persons of Muslim community were not allowed to cremate the dead body of an elder person as a result of which a dispute had arisen. However, later on in the presence of local administration and police, dead body was cremated in the graveyard. The persons, who were having illegal possession over the disputed land of Waqf Board were given repeated notice by the administration, but

they did not vacate the land. On this, the Chief Executive Officer, Haryana Waqf Board, Ambala vide letter No.5820 dated 23.10.2017 requested the District Magistrate, Kaithal for removing the illegal possession over the aforesaid land of Waqf Board. Further, the District Magistrate, Kaithal vide order endst. No.10498-503/MA dated 06.11.2017 (**Annexure R-1**) had appointed Sh. Sat Parkash, Naib Tehsildar, Kaithal as Duty Magistrate to maintain law and order in view of encroachment from Waqf land of 'graveyard' situated in village Sangn, District Kaithal. On 20.12.2017 illegal encroachment over the Waqf land of graveyard was removed and structure, material lying on this land was also removed through JCB machine and Haryana Waqf Board, Kaithal had taken over physical possession of the above mentioned Waqf land vide possession certificate (**Annexure R-2**).

In their reply, respondents No.1 to 6 have also mentioned that DDR No.6 dated 21.12.2017 was recorded in respect of the complaint of the members of the Scheduled Caste community. The allegations of abusing in the name of caste and setting on fire dung heaps of the petitioners were found false and frivolous. It was found that after removal of material from the land of Waqf Board on the night intervening on 20/21.12.2017 someone had set on fire the dung heaps of the petitioners side.

So far as protection of life and liberty of the petitioners and their family members is concerned, respondents No.1 to 6 have submitted that at present there is no apprehension of breach of peace and in case of any such apprehension, the life and liberty of the petitioners and their family members shall be protected in accordance

with law.

I have heard learned counsel for the petitioners and learned State counsel for respondents No.1 to 6 and gone through the record.

Learned counsel for the petitioners has submitted that the petitioners are still in possession of land measuring 12 kanals. Other higher communities are in unauthorised possession of remaining land of Waqf Board. Respondents No.1 to 6 have not taken any action on complaints dated 21.12.2017 and 25.12.2017 (Annexures P-3 and P-4). There is apprehension of breach of peace and danger to the lives and liberty of the petitioners and their family members at the hands of members of higher communities living in the village. Therefore, directions for taking action on their complaints and protection of life and liberty of the petitioners and their family members as prayed for in the petition may be issued to respondents No.1 to 6.

On the other hand, learned State counsel has submitted that the petitioners and other members of the Scheduled Caste community had illegally possessed 12 kanals of land owned by Waqf Board and their unauthorised possession was removed. The allegations made in the complaints were found to be false. There is no apprehension of any danger to the lives and liberty of the petitioners at present and in case of such apprehension, their lives and liberty will be protected in accordance with law. Therefore, the petition may be dismissed.

In Sakiri Vasu Vs. State of U.P. and others, 2008(1) RCR(Cr.) 392, Hon'ble Supreme Court observed as under:-

“27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this

purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

29. In Union of India vs. Prakash P. Hinduja and another 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).”

So far as the question of issuance of directions for taking action on complaints dated 21.12.2017 and 25.12.2017 is concerned, in view of the observations made by Hon'ble Supreme Court in **Sakiri**

Vasu's case (supra), the petitioners have got equally efficacious remedy of filing complaint before the Illaqa Magistrate having territorial jurisdiction in respect of offences alleged to have committed by the members of the higher caste community and the petition is not maintainable in respect thereof and the facts and circumstances of the case do not warrant issuance of any direction in exercise of powers under Section 482 of the Cr.P.C. in this regard.

So far as the question of issuance of directions for the protection of life and liberty of the petitioners and their family members is concerned, respondents No.1 to 6 have already undertaken to protect the same against apprehension of danger at the hands of persons belonging to the higher communities in accordance with law and, therefore, issuance of directions in the nature of mandamus is not called for/warranted in the case.

In the facts and circumstances of the case, I am of the considered view that the petition is devoid of any merit and is accordingly dismissed. In case the petitioners have any grievance regarding their possessory rights over 12 kanals land, the petitioners may approach the civil Court, if so desired, for redressal of their grievance in accordance with law.

04.02.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No