

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

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**CRM-M-52481-2019
Date of Decision : 23.01.2020**

Mohammed Sadiq

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Imran Farooqi, Advocate for the petitioner.

ARUN KUMAR TYAGI, J.

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for directing respondents No.2 to 4 not to harass the petitioner and interfere in his peaceful life at behest of respondent No.5; to protect his life and liberty from harm at the hands of respondent No.5 and not to take action on the complaint of respondent No.5 during pendency of the appeals arising out of the suit filed by the petitioner.

2. Briefly stated, the petition has been filed on the averments that Alla Ditta, grandfather of the petitioner was owner in possession of the land measuring 47 bighas 7 biswas. The petitioner, one Chotta and Kaka used to serve Alla Ditta who being pleased with their services orally gifted the above-said land to them on 19.04.1963 and they became owners thereof to the extent of 1/3 share each. Subsequently the oral gift was reduced into writing and memorandum of gift deed was executed on 19.05.1963. Alla Ditta, Chhota and Kaka had died. LRs of Chhota and Kaka are denying the aforesaid oral gift and memorandum

of oral gift. Respondent No.5 in connivance with respondents No.2 to 4 threatened to dispossess the petitioner from his 1/3 share illegally. The petitioner filed suit bearing No.308 of 05.08.2018 which was dismissed by learned Civil Judge (Junior Division), Malerkotla vide judgment dated 25.07.2019 whereby respondent No.5 was given liberty to initiate criminal prosecution against the petitioner. The petitioner challenged the said judgment by filing appeal before learned District Judge, Sangrur which is pending. Respondent No.5 has moved a false complaint against the petitioner on 19.11.2019 and thereafter the official respondents have started harassing the petitioner by illegally calling him to the police station and the petitioner apprehends his false implication at the instance of respondent No.5. The petitioner made representation dated 30.11.2019 to respondent No.2 but no action has been taken on the same.

3. I have heard learned Counsel for the petitioner and perused the record.

4. Learned Counsel for the petitioner has argued that respondents No.2 to 4 are harassing the petitioner at the instance of respondent No.5 and also threatening the petitioner to implicate him in a false case. Local police is illegally raiding the house of the petitioner without any authority. The petitioner is a very old person aged about 78 years who could not walk properly. Even then, the petitioner has been called in the police station a number of times. The petitioner made representation dated 30.11.2019 to respondent No.2 but no action has been taken on the same. Respondents No.2 to 4 may be directed to protect the life and liberty of the petitioner and not to falsely implicate

and harass him during pendency of the appeal.

5. In the present case, the petitioner filed Civil Suit No.CS/597/2015 (308 of 05.08.2015) titled as 'Mohd. Sadiq Vs. Bashir Ahmed and others' for declaration as to his ownership and possession to the extend of 1/3rd share over the land in dispute and permanent injunction against alienation, interference in possession and dispossession. The above-said suit was dismissed by Civil Judge (Junior Division), Malerkotla vide judgment dated 25.07.2019 whereby defendants including present respondent No.5 were given liberty to initiate criminal prosecution against the present petitioner. The petitioner has already filed appeal against the above-said judgment and decree. The grievance of the petitioner is that the police is acting in contravention of the statutory provisions and is infringing upon personal liberty of the petitioner in violation of Articles 14, 21 and 22 of the Constitution of India.

6. Respondent No.5 is stated to have made a complaint to respondent No.4. Respondent No.4 is bound to take action on the said complaint in accordance with law and to register FIR and investigate in case the same discloses commission of any cognizable offence by any person including the petitioner. Section 160 of the Cr.P.C. empowers police officer making an investigation under Chapter XII of the Cr.P.C. to require by order in writing the attendance before himself of any person, being within the limits of his own or any adjoining station, who from the information given or otherwise appears to be acquainted with the facts and circumstances of the case and such person has to attend as so required. However, the proviso to Section 160(1) of the Cr.P.C.

mandates that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides. Section 161 of the Cr.P.C. empowers police officer making an investigation under Chapter XII of the Cr.P.C, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, to examine orally any person supposed to be acquainted with the facts and circumstances of the case.

7. Every police officer, being a member of uniformed disciplined force and a public servant, is duty bound to ensure that he acts in strict conformity with the Constitution of India and the laws. In the administrative hierarchy of the police administration, every superior police officer is duty bound to ensure that his subordinate does not breach the law and acts only in strict conformity with the Constitution of India and the laws and to attend to any complaint of harassment or other unlawful act by any member of the police force subordinate to him.

8. The Indian Penal Code, 1860 contains sufficient penal provisions to protect the life and liberty of citizens against police harassment. Section 166-A of the Indian Penal Code, 1860 provides as under:-

“166-A Public servant disobeying, direction under law.

- Whoever, being a public servant, -

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326-A, section 326-B, section 354, section 354-B, section 370, section 370-A, section 376, section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB, section 376-E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.”

9. The offence punishable under Section 166-A of the IPC is cognizable, bailable and triable by the Judicial Magistrate Ist Class and no sanction is required under Section 197(1) of the Cr.P.C. for prosecution of a public servant accused of having committed offence punishable under Section 166A of the IPC.

10. In case respondent No.4 acts in contravention of Section 166-A of the IPC, the petitioner will have equally efficacious remedy of making complaint to the superior police officer and even filing of complaint before the Judicial Magistrate Ist Class having territorial jurisdiction. In case of registration of FIR against the petitioner, the petitioner will have equally efficacious remedy of applying for anticipatory bail.

11. Where equally efficacious remedies are available to a person, exercise of extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India or its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 cannot be invoked by such person. Needless to say that such jurisdiction is exercised by the High Court only in exceptional circumstances of grave

and imminent danger to the person applying for such relief where it is shown to the satisfaction of the High Court that alternative remedies available were resorted to but remained ineffective or turned futile.

12. It may also be observed here that a good number of criminal writ petitions are filed in this Court on allegations of "police harassment" but many of them turn out to be merely directed against matters impeding due process of law and are as such intended to interfere with legitimate mechanisms. No blanket order in vague terms of providing protection of life and liberty can be passed in such cases.

13. In view of the above discussion and availability of the equally efficacious remedies to the petitioner, the present petition is dismissed as being not maintainable with liberty to the petitioner to avail such alternative remedies in accordance with law.

23.01.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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