

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

122

**CRM-M-48569-2019
Date of decision : 20.08.2021**

Ved Parkash Sharma

.....Petitioner

Versus

State of U.T. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ashish Bansal, Advocate
for the petitioner.

Mr. Y.S. Rathore, Addl. Public Prosecutor
for respondent No.1-U.T. Chandigarh.

Mr. Bhavneet Gaur, Advocate
for respondent No.2.

ARUN KUMAR TYAGI, J (ORAL)

The case has been taken up for hearing through video conferencing.

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of FIR No.55 dated 12.04.2019 registered under Section 453 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Sector 19, Chandigarh.

2. The above-said FIR was registered on complaint made by Rajesh Kumar Sharma through his brother-in-law Rajiv Kumar Dutta. In the complaint Rajesh Kumar Sharma alleged that he is living in New Zealand since 2001. He is in possession of House No.172, Sector 20-A, Chandigarh since its construction in 1962. His elder brother (Suresh Kumar Sharma) lives in the upper floor. In 2012 his elder brother

Suresh Kumar Sharma's wife forcibly broke open the door and started some construction work. When care taker Babloo told him about the same, the matter was brought to the notice of NRI Cell and DDR dated 22.02.2012 was lodged in Police Station Sector-19, Chandigarh. The construction work was immediately stopped and possession was restored to him. The police was also informed about the pending litigation regarding the above-said house. On 11/12.12.2019 around 2 o'clock his two step brothers Ved Parkash Sharma (the petitioner) and Surinder Kumar Sharma and Manju Sharma wife of Ved Parkash Sharma came there and asked care taker Babloo for the keys of the ground floor of the house who did not give keys to them and made a telephonic call to him. The above-said persons called police on the spot. He (the complainant) talked to the police officer regarding DDR dated 22.02.2012 on which the police officer stopped the above-said persons from breaking the door, told them that they could not enter into the house and went back to the Police Station. After about thirty minutes Ved Parkash Sharma, Surinder Kumar Sharma and Manju Sharma forcibly broke the lock and entered into the house and afterwards put their own lock. While mentioning about dismissal of civil suit for declaration and possession filed by the petitioner on the basis of Will dated 25.02.1988 and also of the appeal filed against the same by him (the petitioner) and claiming that possession of the complainant was not in dispute and was admitted throughout in the Court proceedings, the complainant requested for restoration of the possession of ground floor of the house in dispute and prosecution of the above-said persons for tress-passing, theft and mis-appropriation of

goods.

3. The petitioner has filed the present petition for quashing of the above-said FIR with consequential proceedings on the averments that House No.172, Sector-20-A, Chandigarh was owned by Shri Kanth Sharma, father of petitioner (Ved Parkash Sharma) and complainant-Rajesh Kumar Sharma. Shri Kanth Sharma executed Will dated 25.02.1988 bequeathing the house in dispute in favour of the petitioner. Shri Kanth Sharma died on 02.07.1992. When the petitioner claimed the ownership of the house in dispute on the basis of the above-said Will, the complainant refused to admit the same. Civil Suit and Civil Appeal filed by the petitioner were dismissed but Regular Second Appeal No.3188 of 2014 titled 'Ved Parkash Sharma Vs. S.K. Sharma and others' is pending in this Court. The petitioner and the complainant are in joint possession of the house in dispute along with other legal heirs. FIR was got registered on mere hearsay after about four months of the alleged occurrence on concocted allegations to harass the petitioner and to prevent him to return to India and pursue his civil litigation. The complainant and his brother-in-law did not get their statements recorded. The caretaker admitted that the petitioner used to visit and stay in the house in dispute and civil cases were pending regarding the same. The petitioner entered into the house after prior information to the local police and made some minor repairs to secure the house in dispute which is in dilapidated condition from trespass/misuse/illegal occupation. The matter involves dispute of civil nature. Offence under Section 453 of the IPC is not made out and the FIR and proceedings arising out of the same are abuse of process of law

and the same may be quashed.

4. The petition has been opposed by respondent No.1-U.T. Chandigarh but no reply has been filed on its behalf.

5. The petition has been opposed by respondent No.2-complainant in terms of his reply filed in the Registry. In the reply respondent No.2 has asserted that the petitioner and respondent No.2 are step brothers as respondent No.2 was born from the second marriage of late Shri Kanth Sharma. Late Shri Kanth Sharma executed Will dated 16.03.1984 bequeathing the house in dispute to respondent No.2 and his brother Suresh Kumar Sharma. Ground floor of the house in dispute is owned and exclusively possessed by respondent No.2. Civil Suit filed by the petitioner was dismissed vide judgment and decree dated 21.02.2011 and Civil Appeal filed against the same was dismissed vide judgment and decree dated 24.01.2014. The petitioner fabricated will dated 25.02.1988 to illegally get possession of the house in dispute and broke open the lock, trespassed into the house and put his own lock which constitutes the offence under Section 453 of the IPC. FIR was rightly registered by the police after thorough investigation. The delay in lodging of the FIR occurred as respondent No.2-complainant is residing out of India. The matter is not purely of civil nature. Respondent No.2 has accordingly prayed for dismissal of the petition.

6. I have heard learned Counsel for the petitioner, learned Addl. Public Prosecutor for U.T. Chandigarh and learned Counsel for respondent No.2 and have gone through the relevant record.

7. Learned Counsel for the petitioner has submitted that the

petitioner has been falsely implicated in the present case. The FIR was lodged after undue and unexplained delay of 120 days. The present FIR has been lodged as a counter-blast by the complainant to the Regular Second Appeal No.3188 of 2014 filed by the petitioner against the complainant. The father of the petitioner executed Will dated 25.02.1988 whereby the house in question was bequeathed in favour of the petitioner. The petitioner claimed the ownership of the house on the basis of the said Will after death of his father. The complainant opposed the claim of the petitioner. No doubt, civil suit and civil appeal filed by the petitioner were dismissed but his regular second appeal is pending. The complaint is based upon hearsay and concocted allegations. In his statement caretaker Sunil Kumar @ Babloo admitted that the petitioner used to visit and stay in the house in dispute in the past as the petitioner is resident of USA and that there is a dispute with respect to the house in dispute and civil cases are pending. The house in dispute was owned by late father of the petitioner and in the eventuality of both the Wills being held to be **not proved**, the petitioner, respondent No.2-complainant and other legal heirs inherited the same by way of intestate separation and all the legal heirs including the petitioner and the complainant are in joint possession of the house. The petitioner entered into the house after prior information to the local police and made some minor repairs to secure the house in dispute, which is in dilapidated condition, from trespass/misuse/illegal occupation. Offence under Section 453 of the IPC is not made out against the petitioner. The matter involves dispute of civil nature and civil litigation is already pending between the petitioner and the complainant regarding the

house in dispute. FIR cannot be registered where the dispute is of civil nature to wreak vengeance upon the opposite party. The FIR and consequential proceedings arising out of the same are abuse of process. Therefore, the same may be quashed. In support of his arguments, learned Counsel for the petitioner has placed reliance on the judgments passed in State of *Haryana Vs. Bhajan Lal and others : 1992 Supp(1) SCC 335 (Supreme Court)* and *Sarabjit Singh Vs. State of Punjab : 2019(3) RCR (Criminal) 303 (Punjab and Haryana High Court)*.

8. On the other hand learned Additional Public Prosecutor for U.T. Chandigarh has submitted that the facts alleged in the FIR satisfy the essential ingredients of Section 453 of the IPC. The FIR and consequential proceedings do not involve any abuse of process. Therefore, the petition may be dismissed.

9. Learned Counsel for respondent No.2 has submitted that Shri Kanth Sharma executed Will dated 16.03.1984 bequeathing the house in dispute in favour of respondent No.2 and his brother Suresh Kumar Sharma. The petitioner propounded Will dated 25.02.1988 which is forged and fabricated. On the basis of Will dated 25.02.1988 the petitioner filed Civil Suit for declaration and possession of the house in question which was dismissed by the trial Court on 21.02.2011. Appeal filed by the petitioner was also dismissed by the Appellate Court on 24.01.2014. Thereafter, the petitioner filed Regular Second Appeal which is pending. When the petitioner failed to get the possession of the house in dispute on the basis of forged and fabricated Will dated 25.02.1988 then he adopted illegal means to get the illegal possession of the house in dispute and illegally broke open the locks of

the house in dispute, trespassed into the same and put his own lock. The petitioner has committed offence punishable under Section 453 of the IPC. The FIR and consequential proceedings arising out of the same cannot be said to be abuse of process. Therefore, the petition may be dismissed.

10. On consideration of the submissions made and perusal of the material on record, I am of the considered view that the petition deserves to be allowed and the FIR and the consequential proceedings arising out of the same are liable to be quashed.

11. Admittedly, house in dispute was owned by Shri Kanth Sharma. Shri Kanth Sharma died on 02.07.1992 leaving behind six sons-Ved Parkash Sharma (the petitioner), Suresh Kumar Sharma, Rajesh Kumar Sharma, Sant Parkash, Surinder Kumar Sharma, Inderjeet Sharma and two daughters-Chand Rani Sharma and Chander Kantha. Complainant-Rajesh Kumar Sharma has alleged that Shri Kanth Sharma had executed Will dated 16.03.1984 bequeathing the house in dispute in his favour and in favour of his brother-Suresh Kumar Sharma which Will was registered on 12.04.1984. On the other hand, petitioner-Ved Parkash Sharma has alleged that Shri Kanth Sharma executed Will dated 25.02.1988 bequeathing the house in dispute in his favour. The petitioner filed Civil Suit No.77 of 2001/1997 against Suresh Kumar Sharma, Rajesh Kumar Sharma, Sant Parkash, Surinder Kumar Sharma, Inderjeet Sharma, Chand Rani Sharma, Chander Kantha, Estate Officer, U.T., Chandigarh and General Public for declaration and possession of the house in dispute on the basis of Will dated 25.02.1988 which was dismissed vide judgment and

decree dated 21.02.2011. In para No.20 of his judgment dated 21.02.2011 learned Civil Judge (Junior Division), Chandigarh held that Will dated 25.02.1988 propounded by the plaintiff (the petitioner) is surrounded by many suspicious circumstances and that Will dated 12.03.1984 in favour of defendant No.1-Suresh Kumar Sharma and defendant No.2-Rajesh Kumar Sharm is duly proved. The petitioner filed Civil Appeal No.435 of 2011 against judgment and decree dated 21.02.2011 which was dismissed vide judgment and decree dated 24.01.2014 passed by learned Additional District Judge, Chandigarh. In para No.36 of his judgment learned Additional District Judge, Chandigarh held that Will dated 25.02.1988 propounded by the plaintiff is surrounded by many suspicious circumstances and the conscience of the Court is not satisfied that Will was voluntarily executed by the deceased in favour of the plaintiff. In para No.37 of his judgment, learned Additional District Judge held that defendants No.1 and 2 have not stepped into the witness box and no person has been examined to prove the execution and attestation of Will dated 16.03.1984 and held that execution of Will dated 16.03.1984 was also not proved. The petitioner has filed Regular Second Appeal No.3188 of 2014 against the above-said judgment and decree in which notice of motion has been issued and the same is pending for hearing. Defendant No.1-Suresh Kumar Sharma and defendant No.2-Rajesh Kumar Sharm did not file any Regular Second Appeal against the above-said judgment and decree in respect of the findings that they have failed to prove execution of Will dated 16.03.1984. Defendant No.1-Suresh Kumar Sharma and defendant No.2-Rajesh Kumar Sharm also did not file any

suit for declaration of their ownership and possession of the house in dispute on the basis of Will dated 16.03.1984.

12. As at present Will dated 25.02.1988 propounded by petitioner-Ved Parkash Sharma and Will dated 16.03.1984 propounded by complainant-Rajesh Kumar Sharma and his brother-Suresh Kumar Sharma have been held not to have been duly proved. In the absence of proof of voluntary execution of any of the Wills by the deceased, the house in dispute would devolve by intestate succession on all the eight legal heirs in equal shares and on such inheritance the house in dispute must be held to be in deemed joint possession of all the legal heirs. Even though complainant-Rajesh Kumar Sharma has claimed the house in dispute to be in exclusive possession of the complainant and his brother-Suresh Kumar Sharma but care taker Sunil Kumar @ Babloo has admitted in his statement made before the police that the petitioner used to visit and stay in the house in dispute. Admittedly, complainant-Rajesh Kumar Sharma is residing in New Zealand since 2001 and petitioner-Ved Parkash Sharma is also residing in USA since 1995. Both of them cannot be said to be in actual physical possession of the house in dispute at the time of lodging of the FIR. Complainant-Rajesh Kumar Sharma did not even personally lodge the FIR and merely sent the complaint online and subsequently by post to the NRI Cell and authorised his brother-in-law Rajive Kumar Dutta to pursue the complaint. In the present case there is a bona fide dispute between petitioner-Ved Parkash Sharma and complainant-Rajesh Kumar Sharma and other legal heirs of Shri Kanth Sharma.

13. The offence of lurking house trespass or house breaking is

an aggravated form of criminal trespass under Section 441 of the IPC. It is now well settled that every trespass is not criminal trespass under Section 441 of the IPC. In order to constitute criminal trespass within the meaning of Section 441 of the IPC the following essential ingredients have to be satisfied :-

- (1) there must be entry into or upon a property in possession of another;
- (2) even if such entry is lawful, it may amount to criminal trespass, if the person entering there, unlawfully remains upon such property; and
- (3) such entry or unlawfully remaining as aforesaid must be with the intent, (a) to commit an offence or (b) to intimidate, insult or annoy the person in possession of the property.

14. In ***Mathuri Vs. State of Punjab : AIR 1964 Supreme Court 986*** (followed in ***Rash Behari Chatterjee Vs. Fagu Shaw : AIR 1970 Supreme Court 20***) Dass Gupta, J. stated the position of law as under:-

"The correct position in law may, in our opinion be stated thus : In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult and that this likely consequence was known to the person entering; that in deciding whether the aim of the entry was the causing of such annoyance intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequence would be such annoyance, intimidation or insult and including also the probability of something also than the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry".

15. If a person enters on land in the possession of another in

the exercise of a bona fide claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence. Claim of right if bona fide will always give protection, howsoever ill-founded in law such claim may be. Bona fide claim of right or title necessarily implies that there may not be a completeness, attached to such right or title. If one possesses actual right or title, there can in fact be no occasion of his having a bona fide claim of such right or title because a claim of right or title necessarily implies a contest of right or title between the claimant and another. Therefore, it would be futile exercise to know as to whether the accused had proved his right or title for, the property. If in the circumstances which go to make up the intention on the part of the accused a bona fide claim to property by assertion of his title is proved he would be protected and if he enters upon the property he does not commit criminal trespass. (See ***Paras Ram Vs. State of H.P. (HP) : 1972 Criminal LJ 1093***).

16. In ***State of Haryana and others Vs. Bhajan Lal and others : 1991(1) R.C.R. (Criminal) 383*** Hon'ble Supreme Court observed as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any

Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability

or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

17. In **Varala Bharath Kumar v. State of Telangana, (SC) : 2017(4) R.C.R.(Criminal) 113** Hon'ble Supreme Court observed as under:-

“It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised.”

18. In the present case, petitioner-Ved Parkash Sharma allegedly entered into the above-said house in exercise of his bona fide claim de hors the requisite intention and in view of the above-referred judicial precedents and the facts and circumstances of the case, offence under Section 453 of the IPC is not made out against the petitioner. Therefore, continuation of the proceedings against the petitioner will be gross abuse of the process of law and will put the petitioner to great oppression and extreme injustice will be caused to the petitioner if the FIR and all consequential proceedings are not

quashed.

19. In view of the above, the petition is allowed and FIR No.55 dated 12.04.2019 registered under Section 453 of the IPC in Police Station Sector 19, Chandigarh and all consequential proceedings arising out of the same are quashed.

20.08.2021

kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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