

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CRM-M-6400-2022

Decided on : 14.03.2022

Hari Parsad and others

. . . Petitioners

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

(Through Video Conferencing)

PRESENT: Ms. Varuna Singh, Advocate
for the petitioners.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of the FIR No. 365 dated 12.08.2019 (Annexure P-1) under Sections 148, 149, 380, 427, 447, 452 and 506 of the Indian Penal Code, 1860 registered at Police Station Sonipat Sadar and all consequential proceedings arising therefrom.

Learned counsel for the petitioners has submitted that in the present case, no offence is made out against the petitioners as the petitioners are co-owners of the plot in question. It is further submitted that the petitioner No. 1 was not even in Sonipat on the date of the incident i.e. 12.08.2019 and petitioner Nos. 2 and 3 although, were in Sonipat, but were not present at the place of occurrence. It is further submitted that the DVD regarding the said incident has been annexed as Annexure P-4. It is contended that the petitioner No. 2 is 100% disabled

and for the said purpose, she has referred to the certificate (Annexure P-2). On the basis of the said arguments, it is submitted that the FIR deserves to be quashed.

This Court has heard learned counsel for the parties and has perused the paperbook.

A perusal of the FIR would show that it is the case of the complainant Ishwar Singh that he had purchased one plot bearing 1075 square yards in the name of his wife and daughter in the year 1990 and regarding the same, the mutation had been entered in the name of his wife and daughter and after getting the registry, he had constructed two rooms after making boundary wall and even got electricity connections with the same. It is further alleged that the same are in the name of the family members of the complainant. Even one submersible tubewell was also installed in the plot. It has been alleged that the petitioners alongwith few other persons were intending to take illegal possession and they demolished boundary wall on the said plot and caused loss. The details with respect to the alleged incident dated 12.08.2019 have been given by the complainant as per which the petitioner No. 1, son of petitioner No. 1, Jagmender S/o Bheem Singh, Rakesh and other persons had come with sticks and forcibly and illegally demolished the wall of the plot and had entered into the plot for taking possession of the same and had even broken down the roof of the room and had taken away the starter of the tubewell and when the complainant objected, then they all said that the complainant should run away or he will be killed.

A perusal of the FIR would show that specific allegations have been made which prima facie constitute the offence as stated in the FIR. Learned counsel for the petitioners has submitted that the petitioners are the co-sharers of the said land. No document which may be a part of the report under Section 173 Cr.P.C. which shows that the petitioner is a co-sharer of the plot in question has been referred to by the learned counsel for the petitioners. Even no Jamabandi/sale deed has been annexed with the present petition to even remotely show that the petitioners are the co-sharers of the said land. Thus, the said argument is of no avail. Moreover, as per the allegations levelled in the FIR, it is the case of the complainant that he was in possession of the plot and had made a boundary wall which had been demolished by the accused. The disputed question of fact cannot be gone into by this Court in a petition under Section 482 Cr.P.C. Even the argument of learned counsel for the petitioners that the petitioner No. 1 was not in Sonipat on the date of alleged incident and petitioner Nos. 2 and 3 were although in Sonipat, but not at the place of incident, cannot be gone into by this Court in a petition under section 482 Cr.P.C. Prima facie, no document muchless an unimpeachable document, has been relied upon by the petitioners to prove the said facts and at any rate, this is a disputed question of fact. Even with respect to the DVD, which has been annexed, the authenticity and permissibility of the same cannot be gone into in case of a petition filed under Section 482 Cr.P.C. Moreover, even the complete challan, containing all the statements recorded under Section

161 Cr.P.C., has not been annexed, nor the documents, which are a part of the challan, have been annexed. The present petition has been filed only on the basis of the defence pleas, and even those do not stand substantiated from the record. It would also be relevant to note that the petitioners had earlier approached this Court by filing a petition for quashing of the FIR in question and the said quashing petition was dismissed vide order dated 15.07.2021 and in the said order, the following observation was made:

“However, in view of the facts and circumstances, I do not find it a fit case to quash the FIR and ancillary proceedings by exercising powers under Section 482 Cr.P.C. especially when the case is still at the stage of investigation.

Therefore, CRM-M-36444-2019 stands dismissed accordingly.”

A perusal of the order reproduced hereinabove would show that a co-ordinate Bench of this Court had found the case to be unfit for quashing of the FIR and one of the important reasons which had been given for dismissing the same was that the investigation was still at preliminary stage. However, this Court is of the opinion that the petition was not dismissed at that stage nor the petitioner was permitted to withdraw the petition with liberty to file afresh after the report under Section 173 Cr.P.C. would be filed. In fact, the co-ordinate Bench had found that it was not a case fit for quashing of the FIR.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

Learned counsel for the petitioner has however referred to the document Annexure P-2 which shows that petitioner No. 2 is suffering from 100% disability. In view of the above, this Court feels that the personal appearance of the said petitioner No. 2 deserves to be exempted. Accordingly, personal appearance of the petitioner before the trial Court is exempted, subject to the following conditions:-

- i) Petitioner shall be represented through his/her counsel;*
- ii) shall not delay/stall the trial proceedings;*
- iii) shall not dispute his identity as accused;*
- iv) shall have no objection if the prosecution evidence is recorded in his absence but in the presence of his/her counsel;*
- v) shall appear before the trial Court as and when required by the trial Court;*
- vi) any other condition which the learned trial Court may impose.*

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present case.

March 14th, 2022

Mehak

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No