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

CRM-M-32477-2015

Date of decision : 15.03.2022

Sajjan Kumar and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Amit Rana, Advocate for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

Mr. Akashdeep Singh, Advocate for respondent No.2.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.414 dated 14.09.2014 registered under Sections 420, 447, 468, 471, 506, 120-B of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station City Tohana, District Fatehabad and all the consequential proceedings arising therefrom.

Learned counsel for the petitioners has submitted that in the present case, the petitioners have been falsely implicated inasmuch as, even as per the case of the prosecution, Iqbal Singh was the person who was the tenant and who was in possession of the suit land and not the present petitioners. It is further submitted that the allegations with respect to the

petitioner having given Rs.56 lacs in illegal manner to the said Iqbal Singh are, baseless and there is no evidence on record with respect to the said aspect. It is argued that in fact, the present petitioners are not in possession of the said land and they have no claim over the same.

Learned counsel for the State and respondent No.2 have opposed the present petition and have submitted that in the present case, charges were framed on 17.01.2015 and against the same, the petitioners alongwith Iqbal Singh had filed Criminal Revision which was dismissed vide order dated 07.07.2015 (Annexure P-8) and in the said order, it was observed that as far as taking over the possession of land comprised in khasra No.67//7 is concerned, the offence of criminal trespass had been committed. It is further argued that the aspect of possession/illegal possession is to be seen on the date of incident and not at the present moment. It is also submitted that in the present case, there are allegations of Sections 420 and 506 of the IPC in addition to the allegations of trespass and since, in the present case, out of 9 witnesses, 4 witnesses have already been examined, thus, the trial of the case is likely to conclude, and, therefore, disputed questions of fact should not be considered in a petition under Section 482 of Cr.P.C. and the said fact would be finally adjudicated at the time of trial.

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

It is not in dispute that the charges in the present case were framed on 17.01.2015 and the Criminal Revision filed by the present petitioners alongwith one Iqbal Singh was dismissed on 07.07.2015. While

dismissing Criminal Revision, the following observations were made:-

“4. Before considering rival contentions, it is seen that the present FIR was got recorded by the complainant Mahant Ayodhya Dass against the revisionists alleging that he is Mahant Mandir Samannath Narsingh Dham Puri, Haridwar. Land comprised in muraba no. 65//23, 67//3, 7, 8, 13 situated at Simble road, Tohana, Tehsil Tohana, District Fatehabad is owned by the mandir and the accused persons are in cultivating possession of the same on batai tihai but without any permission, they have raised boundary wall and construction on the same illegally. The disputed land is agricultural land and other tenants are also there but the accused persons have forcibly raised construction over the suit property without the permission of the owner and has changed the nature of the same. Further Iqbal Singh was tenant under the temple who has sold the possession over the suit land to the other three accused, namely Sajjan Kumar, Rajesh Kumar and Roop Saini and other unknown persons for Rs.56 lakh in an illegal manner and when he tried to stop them from doing so he was threatened by the accused persons forcing him to file the present complaint as prayed for.

5. In this factual position, it is to be seen whether any criminal offence is made out against the accused persons or not. After appreciation of challan papers and after hearing counsel for the parties, this court is of the considered view that prima facie case is made out against accused persons and there is sufficient material was framing of charge against them and the learned trial court has rightly framed the charge.

6. During investigation the Investigating Officer has taken in police possession jamabandi for the year 2011-12 relating to the disputed land and its khasra girdawari. As

per complaint, the disputed land is comprised in khasra no. 65//23, 67//3, 7, 8, 13. Out of this, the main accused Iqbal Singh who is a tenant under the temple is shown to be in possession of the land comprised in 65//23/2 and 67//3,8,13 as tenant. Thus it is seen that he is not a tenant on 65//23/1 and 67//7 and in fact the land comprised in 67//7 is shown to be in possession of Parvinder Singh as gair marusi. So argument of counsel for the revisionist that the dispute is civil in nature cannot be accepted, as over the aforesaid two numbers, revisionist Iqbal Singh is not even tenant and so he could not have permitted any one else to enter the said land. So the argument of learned defence counsel that remedy is available to the complainant to seek eviction of the revisionists-accused persons under section 9 of the Punjab Security of Land Tenures Act 1953 cannot be accepted. As per the allegations, the revisionists-accused persons have trespassed in certain other land of the complainant over which they had no legal right and they had also started raising construction thereon illegally by making encroachment as shown in photographs attached with the challan. So it cannot be said at this stage that the dispute between the parties is simply a dispute of civil nature and no criminal case is made out against the revisionists-accused persons for framing charge against them.”

It is not in dispute that out of 9 witnesses, 4 witnesses have been examined and the trial of the case is likely to conclude in the near future. The question as to whether the petitioner had ever trespassed or not, as well as, the question whether any such money was paid for committing the said alleged trespass, would be finally considered during the course of trial. This Court, at this stage, does not wish to exercise its powers under Section 482 of Cr.P.C. for quashing of FIR and all the subsequent

proceedings arising therefrom.

Learned counsel for the petitioners, at this stage, has prayed that the present petitioners have no FIR against them and they are respectable persons and thus, prays that personal appearance of the petitioners before the trial Court may kindly be exempted.

Learned counsel for the State and respondent No.2 have very fairly stated that they would have no objection in case personal appearance of the petitioners before the trial Court is exempted as the main accused Iqbal Singh is facing trial.

Keeping in view the abovesaid facts and circumstances, the present petition is disposed of and the personal appearance of the petitioners before the trial Court is exempted, subject to the following conditions:-

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

Nothing stated above shall be construed as an expression of opinion on the merits of the trial and the same would be independently adjudicated on the merits of the case.

15.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No