

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

Judgment Reserved on: 04.04.2022

Date of pronouncement: 28.04.2022

1. CRM-M-6163-2017 (O&M)

JOGINDER PAL AND ANOTHER

... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

2. CRM-M-35402-2017 (O&M)

RAGHBIR SINGH AND ANOTHER

... Petitioners

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. M.L. Saggar, Sr. Advocate assisted by
Mr. Sunny Saggar, Advocate
for the petitioners in CRM-M-6163-2017.

Mr. Ajaypal Singh, Advocate
for the petitioners in CRM-M-35402-2017.

Ms. A.K. Khurana, DAG, Punjab.

Mr. Dushyant Sarvesh, Advocate
for deceased-respondent No.2.

VINOD S. BHARDWAJ. J.

The present petitions display a gross abuse of authority by the State Investigating Agency which is reminiscent of a colonial era- where might of Police would stampede all authority. A classic case, where a lessee who had taken possession of a property in a proceeding held in High Court, from the lessor Wakf Board, is being incarcerated for the order passed by the High court against the Punjab Police and in favour of Wakf Board in a

separate writ petition. The subsequent lesser under an auction is being forced to undergo agony of criminal case by the police on a ground that the judgment passed in favour of the lessor Wakf Board by a Division Bench of this High Court was not based on complete facts, without raising any challenge to the Division Bench judgment of this High Court passed in CWP No.484 of 2001 decided on January 31, 2001- wherein the State of Punjab conceded to have encroached upon the land of Wakf Board through the Police Department. While recording its displeasure at the functioning of the Senior Police Officers, this Court had refrained from passing any harsh order. Despite being aware and conscious of the said orders passed by the High Court, the FIR was registered in the year 2016 and investigation has remained unconcluded for a period of nearly six years, without any evidence even to *prima facie* demonstrate as to how the judgment of Division Bench dated 31.01.2001 (supra) was wrong or giving any satisfactory explanation as to why the Department of police has chosen not to raise any challenge to the said order, the police department has clearly taken recourse to a mechanism which reflects a deliberate decision of the police officials to take on people who chose to approach Court of law and sought redressal of their grievances through judicial intervention. Such growing tendency reflects the arrogance of the police administration to disregard judicial authority and rule of law aimed to erode the faith of people in the system of administration of justice and to force them to surrender to the might of the agency of the State expected to maintain rule of law.

2. The instant petitions bearing no.CRM-M-6163-2017 & CRM-M-35402-2017 have been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking quashing of FIR No.259 dated 25.11.2016, under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC', registered at Police Station City

Ferozepur, District Ferozepur.

3. As both the petitions have been filed by different accused persons, namely, Joginder Pal Singh & Narinder Singh (petitioners in CRM-M-6163-2017) and Raghbir Singh, Kikar Singh and Gurmukh Singh (petitioners in CRM-M-35402-2017) out of one and same FIR, raising the same grievance, both the petitions are being adjudicated by one common order with the consent of parties. The facts are being referred to from CRM-M-6163-2017.

FACTS AS PER PETITIONS

4. That before adverting to the merits of the case, certain facts, which are necessary to be noticed before adjudicating the controversy, are being elaborated as under:

4.1 That the instant FIR had been registered at the instance of Ravinder Singh Sandhu Babbal, former M.L.A. and Manpreet Singh son of Nishan Singh against the petitioners. In the FIR, which is appended as Annexure P-7 with CRM-M-6163-2017, it is alleged that the said MLA submitted a complaint to the effect that alongwith the Police Station City Ferozepur, there was the residence of SHO, Police Station City Ferozepur. The bills of telephone connection etc. were also received by the police department. It was also stated that 5-6 quarters of police employees were also constructed near the residence of SHO and that the possession of the said land was also with the police department. Electricity and water connections were also released to the department. They alleged that the police department also used to deposit the house tax and that they had been visiting the Police Station City, Ferozepur since the year 1974-75, however, now showrooms have been constructed on the same place. They raised a question as to how the said place had been handed over to the private persons and suspected that the police officials have connived with the land mafia and have handed over the

said land to the private persons, after receipt of huge amount of money and that a thorough inquiry needs to be conducted into the allegations. The said complaint was jointly signed by Ravinder Singh Sandhu Babbal and Manpreet Singh son of Nishan Singh. The FIR in question was, thus, registered for the commission of offences under Section 420, 465, 467, 468, 471 and 120-B of the IPC.

4.2 The learned counsel for the petitioners submit that the property in question is a Wakf property and was earlier known as Imam Bara, Ferozepur City. The same was under forcible and unauthorized occupation of SHO, Police Station City Ferozepur and was being used as his residence. The said property was never acquired or requisitioned by the State of Punjab and no compensation of any nature whatsoever was ever paid to the Punjab Wakf Board (hereinafter to be referred to as 'the Board'.)

4.3 That the Board had been requesting the S.S.P., Ferozepur for the vacation of the said premises and to hand over the same to the Board. Various representations/letters were also addressed to the higher police functionaries, but to no avail.

4.4 That eventually a CWP No.484 of 2001 came to be filed before the High Court by one Ajit Lal, who was the lessee of the property from the Wakf Board. It was claimed in the said writ petition that the Wakf Board property bearing description Number D-I-IR-53 situated at Mall Road, Ferozepur needs to be restored to the Wakf. The said writ petition came up for hearing on 11.01.2001, wherein a Division Bench of this High Court directed the DAG, Punjab to find out the actual status of the property. Thereafter on 15.01.2001, the S.S.P., Ferozepur was directed to file his own affidavit. Instead of doing so, a detailed written statement/reply was filed on behalf of the respondents. Upon consideration of the affidavit filed by the respondents, the Division Bench of this High Court directed

the Chief Executive Officer of the Wakf Board as well as S.S.P., Ferozepur to appear before the High Court in person. In compliance of the said order, the C.E.O. (Chief Executive Officer) of the Wakf Board appeared before the Court and the department of police was represented by DSP, Ferozepur. The DAG appearing on behalf of the State of Punjab conceded before the High Court that the property in dispute belongs to the Wakf Board and that the same was never allotted to the police department. It was also conceded that the same was occupied by the officers of the police department without any legal authority and undertook that vacant possession of the property in question would be handed over to the C.E.O. of the Wakf Board within a period of one month. The relevant extract of the orders passed by the Division Bench on 31.01.2001 is reproduced herein below:

“The learned Deputy Advocate General conceded that the property in dispute belongs to the Punjab Wakf Board and that the same as never allotted to the police department. He also conceded that the same had been occupied by the officers of the Police Department without any legal authority and submitted that vacant possession of the property in question will be handed over to the Chief Executive Officer of the Punjab Wakf Board within a period of one month.

In view of the above, we do not consider it necessary to pass order in terms of the prayer made by the petitioners and dispose of the writ petition as infructuous with a direction to the Chief Executive Officer to inform the Court in writing whether or not possession of the property in question has been handed over to him.

While disposing of the writ petition in the manner indicated above, we record out displeasure over the lack of respect shown by the senior officers of the Police Department to the order of the Court. However, we refrain from taking any action against the Senior Superintendent of Police, Ferozepur

because he is demitting the office today.”

4.5 That as the vacant possession of the property in question was to be handed over to the C.E.O. of the Board within a period of one month, the Superintendent of Police, Head Quarters, Ferozepur handed over the possession of the property to the CEO of the Board on 22.02.2001 (Annexure P-2).

4.6 That pursuant to the possession having been handed over, an affidavit in this regard was also executed by the Chief Executive Officer (C.E.O.) of the Board on 28.02.2001 (Annexure P-3). The aforesaid affidavit was placed on record in CWP No.484 of 2001 vide order dated 07.03.2001 passed by the Division Bench of this High Court. Thus, the possession of the premises stood duly delivered to the Board under intimation to the High Court and in compliance of the order passed by this Court.

4.7 That after taking the actual physical possession of the property in question by the Board, the said property was leased out by the Board to the petitioners, namely, (i) Joginder Pal Singh son of Kundan, (ii) Narender Singh son of Gurdas Singh (petitioners in CRM-M-6163-2017) and (iii) Raghbir Singh son of Joga Singh, (iv) Kikar Singh son of Jarnail Singh and (v) Gurmukh Singh son of Bachan Singh (petitioners in CRM-M-35402 of 2017) at the rate of Rs.5,000/- per month w.e.f. 01.03.2001 with a donation of Rs.3,60,000/- and alongwith application fee of Rs.5,000/-. The allotment in favour of the petitioners was a subject matter of challenge by Ajit Lal Sharma and others in a subsequent writ petition bearing No.CWP-2609 of 2001. During the course of hearing of the said case on 18.07.2001, the Division Bench of this Court was pleased to permit an *inter se* bid regarding leasing out of the property in question. In the said bid, the petitioners herein had offered a sum of Rs.20,00,000/-, whereas the petitioners in the said writ petition, namely, Ajit Lal Sharma and others did not submit any

further bid . The petitioners herein were granted time to make the balance amount of Rs.16,40,000/-, as they had already paid a sum of Rs.3,60,000/- to the Board. The said balance amount was duly paid by the petitioners by way of four drafts to the counsel appearing on behalf of the Board. The Civil Writ Petition No.2609/2001 was accordingly dismissed, thereafter, vide order dated 06.08.2001 (Annexure P-5). The relevant part of the said order is extracted as under:

“On march 21, 2000,land measuring 509.44 square yards was given on lease to the petitioners on their making a donation of Rs.50,000/-. They were also to pay a monthly rent of Rs.1550/-. Vide order dated January 23, 2001 (a copy of which has been produced as Annexure P8), the lease in favour of the petitioners was cancelled. The land measuring 785 square yards was allotted to respondent Nos. 3 to 6 on their making donation of Rs.3,60,000/-. They had also to pay a monthly rent of Rs.5,000/-. A copy of the order is at Annexure P9. Feeling aggrieved, the petitioners have approached this Court through the present writ petition. They pray that the orders of cancelation of lease in their favour and allotment to respondent Nos. 3 to 6 be quashed.

The case was posted for hearing before a Bench of this Court on July 18, 2001. The parties had offered to pay a higher amount. Ultimately, respondent Nos.3 to 6 had made an offer of Rs.20 lacs. In view of this offer, the petitioners did not press the matter any further.

Mr. Saggar, learned counsel appearing for respondent Nos.3 to 6 states that an amount of Rs.3,60,000/- had already been paid to the respondent-Wakf Board. He has today handed over four drafts, photocopies of which have been produced with Civil Miscellaneous application No.20415 of 2001. The drafts are for an amount of Rs.16,40,000/-. Mr. S.K. Pipat, learned counsel appearing for respondents Nos.1 and 2 acknowledges having received these drafts. He further states that the land shall now remain with respondent No.3 to 6 in terms of the lease

deed.”

4.8 Learned counsel have, thus, argued that after sanction of the building plans, construction was raised thereupon by the petitioners as lessees of the Board. An NOC (Annexure P-9) for the construction of six shops and residence on the ground floor was also granted by the Board on 23.01.2001.

ARGUMENTS BY PETITIONER

5. Learned Sr. Counsel appearing on behalf of the petitioners have vehemently argued that the registration of the FIR in the instant case is an abuse of process of law. He made a reference to the reply filed by way of affidavit of Harinder Singh, P.P.S., Deputy Superintendent of Police, Vigilance Bureau, Ferozepur, which reads as under:

“2. That the inquiry of the above referred applications has been conducted by Special Investigation Team consisting of Rajbir Singh SP(H) Ferozepur, Anil Kumar Kohli DSP (H.Q.) Ferozepur, Jaspal Singh DSP (P.C.R.) Ferozepur, Mukhtiar Singh DSP (Investigation) Ferozepur and Ravinder Singh SHO PS City Ferozepur and after thorough inquiry the said S.I.T. has submitted its Inquiry Report No.367/Reader/SP/H Dated 25.11.2016. During inquiry conducted by the SIT the statements of complainant Ravinder Singh Sandhu (Babbal) and Manpreet Singh named above being first party and that of Rajesh Kumar Chawla, Inspector Amritpal Singh No.326/F.R., Kuldeep Singh son of Bakhtaur Singh resident of Village Fatehgarh Dabrikhana, Ajit Lal son of Devi Lal, resident of Ferozepur, Balvir Singh son of Budha Ram resident of Darie Ke, Bhupinder Singh son of Makbool Singh resident of New Kila, Kuldeep Rai son of Budha Ram resident of Darie Ke, Mohammad Ali Rent Controller, Department of Wakf Board, Ferozepur, Vikas Dhawan (Inspector Nagar Council Ferozepur) were recorded and documents were also perused. During the whole inquiry conducted by SIT, it was concluded that there were residential quarters of the police

employees in the disputed property Unit No.E.S.37/A to 37/8 which were being shown in the name of SSP Ferozepur since the year 1968. But the employees of WAKF Board in connivance with the land Mafia, mentioned the Property No.E.S.37/1 to 37/8 in the Gazette Notification of the WAKF Board as B-1 1-R/53-A WAKF and got done the allotment in their names, but as per the Order No.24/LU/F No.616/96, dated 29.03.1997 and also as per the record of Wakf Board, the first allotment was made in the name of Maan Singh son of Thakur Singh resident of Jawahar Singh Wala Tehsil Abohar now District Fazilka. It has been further found that there is no village with the name of Jawahar Singh Wala in Tehsil Abohar. After that the second allotment vide order No.24/L/U/-762/99 dated 21.03.2000 is in the name of Kirandeep Kaur wife of Amritpal Singh (the then SHO of Police Station City Ferozepur), Ajit Lal son of Devi Lal, Bhupinder Singh son of Maqbool Singh, and kuldeep Raj son of Budh Ram. It is further submitted that Kirandeep Kaur wife of Insp. Amritpal Singh, alleged that his cousin namely Kuldeep Singh son of Bakhtawar Singh, resident of village Fatehgarh Dabrikhana took her signed on blank paper with photographs and got allotted the land from Wakf Board in her favour. She further alleged that above named Kuldeep Singh son of Bakhtawar Singh actually intended/wants to get allotted land from Wakf Board in his name. The third allotment has been found to be in the name of Gurmukh Singh son of Bachan Singh, Raghbir Singh son of Joga Singh, Joginder Pal Singh son of Kundan Singh, and Kikkar Singh son of Karnail Singh vide order No.24/Lease/U-784/2K dated 23.1.2001. As the Wakf Board got cancelled allotment of Ajit Lal etc. and made the allotment in the name of Gurmukh Singh etc. Therefore, Ajit Lal party has filed CWPS No.484 of 2001, 2609 of 2001 and 6218 of 2001 before this Hon'ble Court. In the above said writ petition filed by Ajit Lal etc. property No.B-1, 1-A R/53 has been mentioned, whereas in the gazette notification of the Wakf Board property No.B-1, 1-R/53A, has been mentioned. In this way the property numbers mentioned in the writ petition does

not match with the property numbers allotted by the Wakf Board and the property numbers registered in the assessment report of the Municipal Committee, Ferozepur. At the time of conducting demarcation of the land in dispute, the officials of the revenue department called upon the officials of Municipal Committee Ferozepur and WAKF Board but despite the knowledge of demarcation, the concerned employees of Wakf Board did not ensure their presence at the spot. At the time of demarcation, Deepkamal PPS, DSP (Investigation) from police department and Balvir Singh Clerk from Municipal Council Ferozepur came present at the spot. As per the Letter No.Supdt./SDC-03-2016/5458 dated 11.05.2016 of the SDM and as per the demarcation, the land has been found to be comprised in Khasra No.234 and Abadi Deh within red line. It has been mentioned in the SIT report that as per the record of the revenue department, total land comprised in Khasra No.234 is 2413 kanals 5 marla, wherein no remark, or entry with regard to Islam WAKF Board was found. The first allottee of the same were Kuldeep Raj son of Budh Ram, Ajit Lal, Kirandeep Kaur, Bhupinder Singh and thereafter Kirandeep Kaur transferred her share on the name of Balbir Chand son of Budh Ram and second allottee were Gurmukh Singh, Raghbir Singh, Joginder Pal (petitioner No.1), Kikkar Singh in connivance with the then Executive Officer and other employees of WAKF Board, mislead this Hon'ble Court that the said land belongs to Wakf Board, instead of being within red line and got decided the case in their favour, whereas at that time the police department was having the possession of the said land in dispute. It is worth to mention here that the person, who is in the possession over the land, which falls within the red line, is deemed to be owner of the said land. The above said land in dispute was taken/purchased by Narinder Singh (petitioner No.2) from petitioner No.1 to the extent of his share on 17.10.2011 and thereafter, petitioner No.2 has sold some land to Rajesh Kumar Chawla. One Subhash Kumar owner of Hotel International Ferozepur also got allotted some land from Wakf Board in

connivance with his brother and others. Possession of major portion of the land in dispute is within Narinder Singh (petitioner No.2). But, in the year 2001 as per the orders of the Hon'ble Punjab and Haryana High Court, Chandigarh the then police officials handed over the possession of the said land to the Wakf Board, whereas they were required to submit their version in the Hon'ble High Court after conducting a thorough enquiry in the matter and they were also required to produce their evidence regarding their possession since the year 1968 to 2001 regarding the entry and possession of the police department in the record of Municipal Committee Ferozepur and also evidence regarding the house tax since the year 1968 to 2001 regarding the entry and possession of the police department in the record of Municipal Committee, Ferozepur and also evidence regarding the house tax since the year 1968-2001 but they had not done so and nor filed any case in the civil court with regard to their ownership and possession since the year 1968.

On the other hand, the concerned police officials in connivance with the parties, left their 30-32 years old possession, which is under suspicion. During inquiry the certified photocopies of the original record relates to land in dispute was sought from the CEO Punjab Wakf Board Chandigarh vide Letter No.29601/C but the required record was not provided by the office of CEO Punjab, WAKF Board Chandigarh and they put of the matter under lame pretext and lingered on the matter. As per record of Municipal Committee, the land in dispute is in the name of SSP Ferozepur since the year 1968. Firstly the accused party, in connivance with each other and also with WAKF Board, managed to got the allotment in their names and further they mislead the Hon'ble Court while conniving with each other, by stating incorrect numbers and in connivance with the then Police officers/officials got the allotment of the land in dispute in their own names and taken over the possession of this land.

As per the record of the revenue department, the land in disputed falls within the red line (Lal Lakeer) and as per

jamabandi there is no entry regarding the facts that the said land belongs to Wakf Board, which clearly proves that the accused party in connivance with the officials of Wakf Board, got transferred the land in dispute in their names by forging the documents. On the basis of above referred thorough inquiry, the S.I.T. Recommended to register the FIR (Annexure P-7) and produce the report before SSP Ferozepur, to approved the same and FIR (annexure P-7) was registered in accordance with law, under the above referred offences against the petitioners and other co-accused referred in inquiry. Moreover, for the deep clarification of this Hon'ble High Court, the detailed inquiry has already been mentioned in Annexure P-7 annexed with the petition.”

6. It has been argued that the police has registered the instant case as a brazen abuse of the process of law in the year 2016 i.e. after a lapse of nearly 15 years of the handing over of the possession by the department of police and the proceedings determined before the High Court. It is urged that even though as per the allegations, it is stated that incorrect documents and forged record was submitted before the High Court by the then police officials, however, the police officials have not been able to point out to any document of title in favour of the department even in reply filed before this Court. Surprisingly, the police has taken a stand that the Board managed to get the notification issued in favour of the 'Wakf', without having any title over the land. No challenge was ever raised to the notification declaring the land to be 'Wakf Property' as well. Furthermore, despite registration of the FIR in the year 2016 and even after filing of the instant petition before this Court in 2017 and till its final hearing before the Court in the year 2022, no document has been placed on record that could show that there was any forgery or fraud committed upon the police department by the petitioners or any other person, including the Board.

7. The learned counsel for the petitioners have further argued that the petitioners are the lessees of the property from the Board. They have taken possession of the property, by giving a higher bid in an *inter se* bid conducted before a Division Bench of this Court, and had taken possession of the premises thereafter. The construction was raised after getting the building plan sanctioned and obtaining NOC from the Board. The petitioners were not beneficiaries in the said proceedings, undertaken before the Court wherein possession of the property was handed over to the Board by the Senior Officials of the Police Department. The petitioners rather entered possession after the same was already handed over to the Board. They further submit that none of the police officials is even an accused in the instant petition, which shows that the entire stand adopted in the reply is merely a ruse and a subterfuge.

8. Learned counsel for the petitioners have raised further arguments that the judgment passed by the Division Bench of this Court in CWP No.484 of 2001 was never challenged before any Higher Court and that the State of Punjab had conceded that the Punjab Police had forcibly occupied the said property without any legal sanctity or authority in law. It is further pointed out that despite not raising any challenge to the said order, the instant FIR has been registered against the petitioners who were not involved in the process of institution of any proceedings for taking possession by the Board. As a matter of fact they took the property in question on the basis of lease deed executed in their favour, and upon payment of lease money and the bid amount. The constructions was raised over a period of time and to the knowledge of everyone.

ARGUMENTS OF RESPONDENTS

9. The contentions of the learned respective counsel for the petitioners have been opposed by the learned counsel appearing on behalf of the respondent-

State. She has placed reliance upon the reply filed by way of an affidavit of the DSP, Vigilance Bureau, the relevant extract of whereof has already been reproduced above. It is contended that SIT had been constituted and that a thorough inquiry was conducted and from the inquiry report, the property was shown in the name of SSP, Ferozepur, however, possession thereof was delivered to the Board, and that the possession was wrongly handed over to the Board by the police department. A further reference is also made to the extract of the said reply to contend that the police official/department handed over the possession of the land to the Board whereas they were required to submit their version in the hon'ble High Court after conducting a thorough enquiry in the matter and they were also required to produce their evidence regarding their possession since 1968 to 2001 as well as the entry with regard to possession of the police department as per the record of the Municipal Committee, Ferozepur and also the evidence about the house tax being paid by the police department from 1968 to 2001. But this had not been done nor any civil suit had been filed to claim the ownership and possession over the land. It is further alleged that the then police officials, in connivance with private respondents, left their 30-32 years' old possession which falls within the ambit of suspicious activity and that the land was got transferred in the name of Punjab Wakf Board by forging of documents.

10. I have heard the learned counsel for the respective parties and have gone through the documents appended alongwith the petitions and the response filed by the State.

ANALYSIS

11. Upon consideration thereof, I find it to be a glaring case of gross abuse of process of law on the part of the respondent-State of Punjab. It is a case where the petitioners have been subjected to undue hardship and they have been

arraigned as accused persons in an FIR that is reflective of highhandedness on the part of the official respondents displaying scant regard to the law. The mischief on the part of the police is reflected from the manner in which the FIR has been registered. Even though the police department itself was in possession of the property in question, yet it took nearly 16 years for the police to look into the same and that too when some third person submitted a complaint to the police. The Department of Police being the primary party which now claims to be aggrieved did not set itself in motion and required a third-party intervention to set itself in motion. Despite the respondent-State having failed to show any right or title over the land in question before the High Court in CWP No.484 of 2001 and having handed over the vacant and actual physical possession of the land in question to the authorities concerned after conceding before the High Court, the instant FIR has been registered after a lapse of more than 15 years without raising any challenge to the orders/judgments passed by the Division Bench. Even after the registration of the present FIR in the year 2016, the respondents could not point out any document otherwise purportedly forged by the petitioners or by the Board. It is incomprehensible as to how and on what circumstances or documents has the respondent-police department made out a case of forgery of documents. Significantly, even though it is alleged that the Board had connived with Senior Police Officials to take possession of the land, however, no police official has either been named or has been referred to as a co-accused and the proceedings have been lodged against the lessees, who had submitted highest bid pursuant to the proceedings initiated in CWP No.2609 of 2001. It is also not in dispute that the respondent-police department has not raised any question of title in its favour or has submitted any document to claim the title of the Wakf Board. The petitioners were, infact, inducted as lessees by the Board on a property, the possession

whereof had been handed over by the respondent-police department after acknowledging before the High Court that it was in unauthorized possession of the said land and did not hold any valid title.

12. The instrumentality and the agencies of State are required to display fairness in action and not to conduct themselves as encroachers and usurpers of private property by sheer abuse of brute force. The humiliation and harassment meted out to a lessee of the property, while choosing to ignore the officials of the Board as well as the officials of the police department, who are alleged to have connived in delivering/handing over the possession of the property to the Board, itself shows the highhandedness on the part of the police officials. Even thereafter, despite lapse of a period of nearly 06 years after the registration of FIR, the investigation in the case has not been concluded and no document, reflecting a vested title in the police department, has been submitted on record. It is also not alleged in the written statement as to which document was forged or fabricated by the petitioners herein. It is also not the case of the State that the petitioners have ever made any misrepresentation to any of the authorities or had caused any wrongful loss. Relevant statutory provisions under which the instant FIR has been registered are reproduced herein below:

415. Cheating.— *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.*

Section 420- Cheating and dishonestly inducing delivery of property.— *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to*

make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 463. Forgery.— *[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.*

Section 464 Making a false document. —*[A person is said to make a false document or false electronic record— First —Who dishonestly or fraudulently—*

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly —Who dishonestly or fraudulently causes any person to sign, seal,

execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]

Section 465. Punishment for forgery.—Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471. Using as genuine a forged document or electronic record.—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Section 120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

13. From a bare perusal of the aforesaid statutory provisions as also the undisputed question of fact and the documents appended with the petitions, it is evident that the bare ingredients of the offences in question are not made out qua the petitioners. In order to attract the offence relating to Section 420 of IPC, there has to be an offence of cheating by the accused. Undisputedly, there is no act of deceiving on the part of the petitioners to induce any person to deliver possession of any property. Assuming for the sake of convenience that the possession of the property was wrongfully induced to be delivered by the department of police, such inducement or deception was rather practiced by the Board upon the department. It was not an act or omission on the part of the petitioner, who are the lessees. They had stepped into the shoes of the Board, after the possession thereof had already been delivered to the Board.

14. Similarly, for the purpose of attracting offences under Sections 465, 467, 468 and 471 of IPC, there has to be a forgery or making of a false document or use of a false/forged document as genuine for the purpose of cheating. Undisputedly, the FIR and the investigation conducted so far does not allege or make out any case of forgery or making of a false document or the use thereof as

genuine for the purpose of cheating by the petitioners. The entire thrust in the response filed by the respondent-State is that the officials of the police department connived with the Board. Thus, even if accepting the case of the respondents as gospel truth, for the sake of arguments, yet, the allegations, on a bare perusal do not make out any cognizable criminal offence against the petitioners. The very fact that the investigation has remained inconclusive despite the lapse of a period of nearly six years merely fortifies the mischief of police. No steps have been initiated by the police department to move any application or appeal against the judgment passed earlier by the Division Bench of this Court, which shows that the department has accepted the judgment of the Division Bench and does not raise any challenge to the handing over of the possession by the police department to the Board. Yet, it has chosen to harass and humiliate the lessees of the said land and to continue to incarcerate them through the aforesaid FIR and by keeping it pending.

QUASHING: CATEGORY OF CASES

15. The Hon'ble Supreme Court has laid down the categories of cases for exercising of power of quashing conferred under Section 482 of the Cr.P.C. by the High Court in the matter of **State of Haryana Vs. Bhajan Lal** reported as **AIR 1992 SC**. The following parameters and categories of cases have been illustrated for exercising the power under Section 482 of the Cr.P.C. by a High Court:

“102. 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 channelized 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 FIR 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 FIR 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 FIR 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.

103. *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 FIR 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.”*

16. The said judgment still holds the field insofar as the exercise of power under Section 482 of the Cr.P.C. is concerned and is the basic judgment on the subject and has been followed as recently as in the judgment of **Ramveer Upadhyay and anoher Vs. State of U.P. and another** reported as **2022 SCC OnLine SC 484**. It clearly provides that where the FIR in question fails to disclose a cognizable offence despite consideration of the allegations, and where the initiation of the criminal proceedings is a gross abuse of process of law, a High Court can exercise jurisdiction under Section 482 of the Cr.P.C. to secure the ends of justice.

CONCLUSION

17. I find that overwhelming circumstances exist in the instant case as would establish it to be a case of blatant disregard of law and a gross abuse of the power vested with the authorities, who have chosen a novel method to incarcerate the lessees for having entered into the premises/land that the respondent-police department wants to continue to occupied sans any authority of law but for its perceived entitlement and being over-confidently aware and conscious that as an

investigating and prosecuting agency, it cannot be subjected to any further check by other instrumentality of the State. Such a mindset on the part of an Agency of the State reflecting its intents to occupy a land even if it amounts to grabbing the same without any entitlement and to penalize any one, who owns such land, in a procedure unknown to law, need to be deprecated. I find that the authorities have violated the sanctity of rule of law and has chosen to disregard the proceedings undertaken in CWP No.484 of 2001 and CWP-2609 of 2001 at their own convenience despite being aware of the said judgments and the orders passed therein.

18. Even though the FIR is considered as only a process of initiation of investigation, however, it cannot be perceived that a person named as an accused in an FIR does not suffer any social stigma or restriction on his civil liberties. The petitioners have lived under the constant fear for the last more than six years for having been named as accused in the FIR in question, and would have definitely undergone the trauma of being arraigned as accused in criminal prosecution. The respondent-State cannot be allowed to take shield in an arguments that registration of the criminal case *ipso facto* does not prejudice an accused. The consequences of FIR being too well known, it was incumbent upon the State to have acted expeditiously and to have concluded the investigation in a time bound manner, in case, its intent was fair. The fact that the respondent-police department opted to keep the FIR pending and without taking the investigation to any logical end reflects malafide on their intent. Fairness, transparency, rule of law and primacy of rights of individual were never a concern or regard by the respondent-department of police.

19. The police, as a law enforcement agency, cannot be the oppressor of law and display its status above law. A Court of law has to stand co-actively to

ensure that the instrumentalities of the State do not become a law unto themselves and has to act swiftly, deftly and sternly to send a definite message that illegal acts even if by the State or its instrumentalities cannot be spared and the civil liberties of the individuals cannot be made to be sacrificed by the authorities building powers to prosecution.

20. The present case would clearly fall in the category as would be identified in category (1); (3) and (7). Even though the power is required to be exercised sparingly and in exceptional circumstances with greater introspection, however, the facts and the circumstances noticed above make out a clear case that if the jurisdiction under Section 482 of the Cr.P.C. is not exercised in a case of such nature, it would rather defeat the ends of justice.

21. The instant petitions are, thus, allowed. The FIR No.259 dated 25.11.2016, under Sections 420, 465, 467, 468, 471 and 120-B of the IPC, registered at Police Station City Ferozepur, District Ferozepur as well as the entire subsequent proceedings arising therefrom are quashed qua the petitioners. The respondent-State is also directed to pay compensation to the tune Rs.50,000/- (Rs.10,000/- to each petitioner) for the harassment and humiliation extended to them.

Petitions are allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

April 28, 2022
rajender

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