

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

CRM-M-33661 of 2022

Date of Decision: 1st August, 2022

Mangal Singh and others

Petitioners

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. M. S. Kathuria, Advocate for the petitioners.
Mr. Amit Mehta, Senior DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

This is a petition seeking quashing of FIR No. 40 dated 18.2.2018, under Sections 448, 511, 473, 506 and 201 IPC registered at Police Station Meharban, District Ludhiana and final report under Section 173 Cr.P.C. dated 30.7.2020.

The brief facts are that the FIR was registered at the instance of Surenderpal Singh (now deceased) who stated that he had agricultural land of 69.5 marlas. On the said land, in 373 Gaz area his father got constructed Gurudwara Sahib and rest of the land was kept vacant on which fencing was done and a gate was placed. Three-four years back, petitioner No. 1 -Mangal Singh along with some unknown persons had tried to trespass the land. The matter was reported to the police. Thereafter, a suit was filed. On 17.02.2018, some unknown persons armed with weapons tried to encroach upon the land of Gurudwara Sahib by breaking the fence and boundary. A video recording of the incident was done. There were allegedly 70-80

persons on the spot who came on private vehicles. Petitioner No. 1 broke the fence and wall of Gurudwara Sahib, uprooted the gate and damaged the property of Gurudwara Sahib. It was claimed that unknown persons can be identified by the complainant. Three vehicle numbers were mentioned in the FIR. Mangal Singh was arrested and during investigation, it was found that Gurinder Singh, Baldev Singh, Sukhdev Singh @ Billa and Karnail Singh came on vehicles bearing No. PB-32-R-6108, PB-10-EH-1577, PB-10DZ-8758, PB-10-F-0332 and PB-10-EB-7626 and accused were the owners of the aforesaid vehicles. During investigation, it revealed that motor cycle bearing registration No. PB-10-DZ-8758 was found to be registered as a car. The number plate used was fake. Section 473 IPC was added. Accused-Sharnail Singh disclosed before the Investigating Officer that on the date of incident he along with Baldev Singh and Karnail Singh went to Street No. 8, Prem Colony, Meharban on motorcycle bearing registration No. PB-10DZ-8758. He disclosed that motorcycle was purchased by him from a scrap dealer and a fake number plate was installed. He further disclosed that after the incident, he threw the number plate in the canal. Final report was submitted and charges are yet to be framed.

Learned counsel for the petitioners submits that there are civil litigations pending between the parties. He further submits that no case is made out under Section 448 IPC. The accused were not taking possession of their own land and not of the land on which Gurudwara Sahib is situated. Further argument is that civil dispute has been given colour of criminal litigation.

The Supreme Court in **Md. Allauddin Khan v. The State of Bihar and others**, 2019(5) RCR (Criminal) 695, held as under:

“14. The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323, 379 read with Section 34 IPC is made out against respondent Nos. 2 and 3 or not.

15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

17. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short “Cr.P.C.”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.”

The issues raised by learned counsel for the petitioners are disputed questions of facts. These are defences available to the accused during trial, it would be required to be substantiated by evidence.

Merely as civil litigations are pending between the parties this itself will not be a ground for quashing the FIR, more-so when there are specific allegations that Gurudwara Sahib situated on the ancestral land of

the complainant was damaged and there is a video recording supporting the allegations.

In **Rathish Babu Unnikrishnan v. The State (Govt. of NCT of Delhi) and another**, Criminal Appeal Nos. 694-695 of 2022 decided on 26.4.2022, the Supreme Court held as under:

“13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges’ bench in State of Haryana v. Bhajan Lal, and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.

“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

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No case is made out for quashing the FIR.

The petition is dismissed.

1st August, 2022
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- MANOJ KUMAR
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I attest to the accuracy and
integrity of this document