

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

203

CRM-M-25084-2012 (O&M)

Date of decision: 18.08.2023

Virinder Singh

....Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Vijay Kumar Rana, Advocate for the petitioner

Mr. G.S. Sandhu, DAG Punjab

RAJBIR SEHRAWAT. J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for quashing the FIR No.87 dated 20.06.2008 (Annexure P/1) registered under Sections 420, 465, 467, 471, 120-B IPC at Police Station Sirhind, District Fatehgarh Sahib and order dated 18.08.2011 (Annexure P/8) passed by learned Additional Chief Judicial Magistrate, Fatehgarh Sahib vide which the petitioner was summoned to face trial in the abovesaid FIR along with all consequent proceedings.

2. The previous order dated 24.11.2022 reads as under:-

“Status report by way of affidavit of Sh. Sukhvir Singh, DSP, dated 22.11.2022, filed in the Court today, is taken on record and a copy thereof supplied to learned counsel for the petitioner.

Learned counsel for the petitioner again seeks time to comply with the order dated 27.05.2019.

Adjourned to 27.03.2023.

Learned counsel for the petitioner would also apprise this Court about the stage of the trial going on qua all the accused.”

3. Learned counsel for the petitioner has not been able to specify as to the stage of the trial going on qua the accused.

4. The present petition is pending in the High Court since the year 2012. There is no interim order restraining the Trial Court from completing the trial, as such.

5. The brief allegations against the petitioner in the complaint filed by the complainant are that the land in question belongs to the Gram Panchayat, however, the husband of the complainant was in cultivating possession of the said land for the last about 45 years. On the fateful day, the petitioner along with some other persons uprooted the crops of the complainant and forcibly entered into the land. On these allegations, the FIR was lodged by the Police. In the said FIR, cancellation report was prepared by the Police and the same was presented before the Magistrate. However, the Magistrate did not accept the said cancellation report. Rather, vide a reasoned order, had ordered the case to be taken up as a complaint case and the petitioner was summoned in the said complaint case. It is challenging the said complaint and the summoning order that the present petition has been filed.

6. Arguing the case, learned counsel for the petitioner has submitted that complainant is not the owner of the land in question. Rather, there is an order of correction of the *khasra girdawari* in favour of the petitioner, because he had purchased the said land from Gurmeet Singh and Balwinder Singh vide Sale Deed dated 02.09.2004. Since the petitioner is the registered owner, therefore, no case could have been registered against the petitioner and, therefore, the cancellation

report was rightly filed. Hence, the order passed by the Magistrate is not sustainable.

7. Having considered the arguments of the learned counsel for the petitioner and having perused the case file and the order passed by the Magistrate, this Court finds no substance in the argument raised by the counsel for the petitioner. After the cancellation report was presented by the Police, the Magistrate had the option to either accept the same; or to order further investigation; or to proceed with the matter as a complaint case. The Magistrate has resorted to the third type of proceedings by way of a reasoned order. Therefore, *per se*, no fault can be found with the order passed by the Magistrate.

8. So far as the argument of learned counsel for the petitioner that the petitioner has acquired the ownership through a sale deed executed by Balwinder Singh and Gurmeet Singh is concerned, the said argument is only one of the facts which the petitioner will be taking as a defence. However, there is no document on record in the cancellation report which shows that even the abovesaid vendors of the petitioner were the recorded owners of the land in question and were having right to sell the same, and further that they were in possession, as such. The dispute is regarding the very title of the property. Unless, the petitioner had traced the title of his vendors, the fact of transfer of title to the petitioner cannot be presumed at this stage, unless the same is tested before the Court.

9. Needless to say that the emphasis of the petitioner on the cancellation report which mentions that the complainant was not the owner of the property involved in the case. However, the complainant had not even asserted her to be the owner. Her positive case is that the land belongs to the Gram Panchayat and her husband was only in cultivating possession of the same. Therefore, merely

because she failed to show the title document in her favour, would not necessarily mean that the petitioner or his predecessors have validly acquired the title, particularly when assertion of complainant is that the land belongs to Gram Panchayat. Since the matter involves forcible taking possession of land by the petitioner, by allegedly uprooting crops of the complainant, the same could not have been decided by the cancellation report, as such.

10. Therefore, finding no illegality or impropriety in the order passed by the Court below, this Court does not find any merit in the present petition; and the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

18TH AUGUST, 2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No