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

CRM-M-23903-2018
Date of Decision: 22.08.2023

Kuldip Singh ...... Petitioner

Versus

State of Punjab and another .... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Abhishek Sethi, Advocate, and
Mr. Gaurav Singla, Advocate,
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab,
for respondent No.1-State.

Mr. Rakesh Kumar, Advocate, for
Mr. G.N.Malik, Advocate,
for respondent No.2.

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RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.3 dated 10.01.2016, registered under Sections 167, 177, 420 and 120-B of the Indian Penal Code, 1860, at Police Station Raikot, District Ludhiana Rural.

2. It is submitted by the learned counsel for the petitioner that the case against the petitioner is totally concocted. The only allegation against the petitioner is that he obtained a loan from a bank, allegedly, on the basis of a fabricated Non-Encumbrance Certificate. However, in fact, the complainant has got the FIR lodged against the petitioner only because of

grudge being nursed by him on account of civil litigation pending between the parties. Otherwise, it is not even in dispute that the said Non-Encumbrance Certificate was duly issued by the concerned officials from the revenue department. Therefore, there is no question of any fabrication by the petitioner, as such. Moreover, whatever loan was availed by the petitioner on the basis of alleged fake Non-Encumbrance Certificate, that already stood paid up by the petitioner, as is reflected from Annexures P-2 and P-3 attached with the present petition. Hence, the present petition is purely an attempt to misuse the process of law. It is further submitted by the learned counsel that otherwise also, there was no outstanding loan or mortgage qua the land which could have been termed as any encumbrance upon the property, as on the date of issuance of Non-Encumbrance Certificate involved in the case. The alleged 'encumbrance' was only some order of status quo passed by the Trial Court. Even, if there was an order of status quo, that could not have been any encumbrance upon the title or the entitlement of the petitioner to avail the loan, as such. So far as the civil litigation is concerned, the Trial Court had passed the judgment and decree dated 24.07.2010 (Annexure P-6) in favour of the petitioner. Though, the said judgment and decree were reversed by the Lower Appellate Court, vide order dated 25.01.2013 (Annexure P-7), however, the petitioner had approached this Court vide **RSA-4190-2016** titled as **'Bhinder Singh Vs. Joginder Singh and others'** and in that Regular Second Appeal, vide order dated 09.09.2016, this Court has already stayed the operation of the judgment and decree passed by the Lower Appellate Court. Therefore, in fact, even as on today, the title of the land in question is in favour of the petitioner.

3. On the other hand, learned counsel for the State, being instructed by ASI Buta Singh, and being assisted by Mr. Rakesh Kumar, counsel for respondent No.2/complainant, has submitted that the petitioner availed the loan on the basis of a Non-Encumbrance Certificate, which did not reflect the entry qua the status quo order passed by the Civil Court. The said Non-Encumbrance Certificate was prepared by the revenue officials in collusion with the present petitioner. Therefore, the petitioner is liable to be punished for the same.

4. Having heard learned counsel for the parties and having pursued the case file, this Court finds that the petitioner had obtained a Non-Encumbrance Certificate from the revenue authorities; by duly applying for the same and by paying the requisite fee for that. The petitioner had no authority to interfere with any process of making any entry into the revenue record regarding any status quo order passed by any Court. Therefore, per se, the petitioner cannot be held liable for any omission in making entry into the revenue record, as such. So far as the allegation of collusion of the petitioner with the revenue official is concerned, undisputedly, there is no material collected by the police even during the investigation to substantiate the said aspect to any extent. Needless to say that mere omission to make an entry into the revenue record by the concerned revenue official regarding the

Court order; may not necessarily lead to the inference of the petitioner being in the collusion. Once, the petitioner had obtained the Non-Encumbrance Certificate from the revenue officials through the proper channel, and that fact has not even been disputed by the respondent-State so far, then, at least, one thing can be said for sure; that the certificate, as such, is not fake.

5. The other aspect involved in the matter is that the basic allegation against the petitioner is of obtaining the loan from the bank on the basis of the alleged fake Non-Encumbrance Certificate. However, that loan already stands repaid by the petitioner. There has been no complaint from the concerned Bank that the petitioner has defaulted in re-payment of the said loan. Therefore, otherwise also, the aspect of any loss of the public money of the concerned bank; is simply ruled out.

6. Moreover, although, there have been civil litigations between the parties, however, as is reflected from the record, jamabandi at the relevant time, which is annexed with the present petition as Annexure P-4, shows the petitioner to be the owner of the land in question. There may be any inter se dispute between the complainant and the present petitioner qua the title of the land in dispute, however, that is to be decided in the separate proceedings, which are pending in the Regular Second Appeal before this Court. The Criminal proceedings, by any means, are not substitute for settling the dispute regarding the title of the land in question.

7. In view of the above, this Court finds that very initiation of the proceedings was totally misconceived and has resulted in miscarriage of

justice qua the petitioner. Otherwise also, this Court does not find it appropriate to permit continuation of the proceedings in the FIR involved in the present case, and thereby, waste the time of the Courts on an aspect, which in essence is intended to settle some collateral aspect, which is already pending before this Court on a civil side.

8. In view of the above, the present petition is allowed. FIR No.3 dated 10.01.2016, registered under Sections 167, 177, 420 and 120-B of the Indian Penal Code, 1860, at Police Station Raikot, District Ludhiana Rural, and all other consequential proceedings arising therefrom, are hereby quashed qua the present petitioner.

9. However, passing of this order shall not prevent the revenue department from taking any action against its own revenue officials qua their omission of making entry into the revenue record, if any.

(RAJBIR SEHRAWAT)
JUDGE

22.08.2023
adhikari

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No