

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2733 of 2018 (O&M)
Date of Decision: 25th April, 2023

Kashmir Singh and another

.....Petitioners

Vs.

State of Punjab and others

....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Madan Lal Saini, Advocate for the petitioners.

Mr. P.S. Pandher, AAG, Punjab.

Mr. Amrik Singh, Advocate for respondents No.3 and 4.

DEEPAK GUPTA, J.

Prayer in this petition is to quash FIR No.118 dated 24.10.2017 (Annexure P.2) registered at Police Station Nurpurbedi, District Ropar under Sections 430/432 IPC and all subsequent proceedings arising therefrom.

2. FIR in question was lodged on the complaint of Block Development & Panchayat Officer, Block Nurpurbedi, Tehsil Anandpur Sahib, District Ropar, produced by Sarpanch of Gram Panchayat Village Singhpur before the Police, as per which drainage work was done by the Panchayat as per its resolution dated 18.02.2017, from main road near the boundary of Village Gopalpur for disposal of the dirty water by way of laying underneath pipes in the vacant panchayat area by spending ₹ 1,25,000/-. At that time, accused Kashmir Singh and his son Jaswinder Singh and had tried to interfere in the work and misbehaved with the Panchayat but Panchayat completed the work. It is alleged that on the night of 15.09.2017, the accused- petitioner dismantled the work, which caused

financial loss to the Panchayat.

3. It is contended by the petitioners that Panchayat had exchanged its land with the land of the petitioners. It is submitted that vide an agreement dated 19.12.2016, petitioner – Kashmir Singh had given 08 Marla of his land out of the land comprised in Khasra No.14/12/2 (1-4) and 29(2-13) to Panchayat and in lieu thereof, Panchayat had given 08 marlas of land comprised in khasra No.24/4/2 to the petitioner. Possessions of the exchanged lands were handed over and that Panchayat is draining its dirty water through the drainage channel but by concealing this fact, this FIR was lodged. It is also claimed that petitioners had earlier given legal notice to the Sarpanch of the Panchayat and had also filed a civil suit for specific performance of the agreement of exchange.

4. As per the reply filed by respondent No.2 by way of affidavit of Harinder Kaur, Block Development and Panchayat Officer, Nurpur Bedi, though the agreement of exchange relied by the petitioner was executed but it was never acted upon, since the Gram Panchayat was not competent to alienate/ exchange the said land without sanction of the competent authority as required. It is submitted further that in the agreement itself, it is specifically mentioned that if exchange of land is not implemented due to any reason, then agreement will be deemed to be cancelled and ownership rights shall remain as it is. Respondents submitted further that petitioner damaged the drain laid by the Gram Panchayat causing financial loss and, therefore, FIR is not liable to be quashed.

5. Having considered submissions of both the sides, I find no merit in this petition. Annexure P.1 is the copy of agreement dated 19.12.2016 relied upon by the petitioners, which is amongst the petitioner – Kashmir Singh and Gram Panchayat so as to exchange the respective 08

marlas of land. Gram Panchayat had also taken up all the responsibility to get the agreement reflected in the revenue record. However, last paragraph of the agreement is very important, which reads as under: -

“.....If due to any reason the exchange of land cannot be implemented in the revenue record or if any party failed to deliver possession of the land mentioned in the agreement, then this agreement would be deemed to be canceled and the ownership rights of the parties would be as that were before execution.....”

6. Learned State Counsel as well as counsel for respondents No.3 and 4 have further drawn attention towards Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964, which clearly provides that Gram Panchayat can exchange the land only with the prior approval of the government. In this case, no such approval has been granted till date.

7. Learned counsel for the petitioners has relied upon a decree dated 30.09.2022 (Annexure P.8) passed by Ld. Civil Judge (Junior Division), Anandpur Sahib in civil suit CIS No.90/2017 titled ***Kashmir Singh Vs. Jatinder Kumar @ Jatinder Singh***, whereby suit for possession by way of specific performance of an agreement of exchange was decreed ex parte. However, it is rightly contended by learned State Counsel that neither the Gram Panchayat nor the State nor the Block Development & Panchayat Officer i.e., complainant of the FIR was party to the civil suit and, therefore, that decree is not binding upon them. Even otherwise, the same can be pleaded by the petitioners in their defence.

8. **State Of Haryana vs Ch. Bhajan Lal: 1992 AIR 604, 1990 SCR Supl. (3) 259**, laying down guidelines while exercising extra ordinary power for quashing of the FIR, it has been held by Hon'ble Supreme Court as under:

“8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given 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 channelised and inflexible kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.”

9. In view of the legal position as above and applying the same to facts of this case, it is held that no ground is made out for quashing the FIR.

Dismissed.

April 25, 2023	(DEEPAK GUPTA)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No