

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28529-2016**Date of Decision: 10.01.2023**

Balram & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. SS Majithia, Advocate for the petitioners

Mr. Rajiv Verma, DAG Punjab

Sandeep Moudgil, J.

The petitioners seek quashing of FIR No.53 dated 27.05.2015 (Annexure P2) under Sections 447/511/506/148/149 IPC, registered at Police Station Haibowal, District Ludhiana City.

Brief facts of the case are that a suit for permanent injunction was filed by petitioners No.1 & 2 for restraining respondent No.2 and one Munish Khanna s/o Raj Kumar from dispossessing the plaintiffs/petitioners for interfering in their actual peaceful possession over the property/plot i.e., No.77, measuring 287-7/9 sq.yards. The said civil suit was decreed by the Civil Judge (Jr. Divn.), Ludhiana vide judgment and decree dated 26.05.2015 holding that the plaintiffs/petitioners have proved on record the copies of the sale deed in their favour dated 02.04.2002 as Ex.P2 whereas, the respondent-defendants have failed to prove their possession and since the question of title is not involved, the argument of the respondent-defendants is that the sale deeds produced on record by the plaintiffs/petitioners are not admissible in evidence being certified copies, was rejected by the trial court. Thereafter, on

27.05.2015, FIR No.53 was registered under Sections 447/511/506/148/149 IPC at Police Station Haibowal, District Ludhiana City by Vimal Khanna – respondent No.2, the contents of which read as under:-

“...Stated that I am the resident of above said address and I run my own business. Me and my cousin brother Manish Khanna have a plot measuring 600 sq.yards back side Radha Swami Satsang House behind Partap Pura which we had purchased in year approx. 1991, the mutation of the same is registered in our name in revenue department. After some time Kishan Kumar, Balram, Sushil Kumar r/o Ludhiana tried to take forcible possession of our plots. At that time demarcation was got done from the revenue department. That as per record, the area of the above said plots was found to be of those khasra numbers mentioned in our registers. The above said people filed a case in the court. That in the year 2005, the above said case which was pending in the Court of Smt. Rajni Shokra, JMIC, Ludhiana was decided in our favour. Upon which the above said people again filed a case in the court of sessions and the Sessions Court referred the case to lower court again. That our above said case was pending in the Court of Ajay Pal, JMIC, Ludhiana. No written order regarding decision has been passed. Yesterday, on 26.5.15 at approximately, 7:00 pm, we received a phone call from our acquaintance that Kishan Kumar, Balram, Sushil Kumar along with their companions are trying to take possession of our plot. When I reached the spot with my companions, all the persons ran away from the spot. Today, I am coming to the police station to inform you...”

At the time of preliminary hearing on 19.08.2016 before this Court, learned counsel for the petitioner sought time to confirm whether on the basis of investigation the police had presented the challan or not. On 14.09.2016, it was submitted that civil suit filed by the petitioners was

decreed on 26.05.2015 whereas the FIR was registered on 27.05.2015 i.e., a day after the passing of the decree. It was also informed that appeal against the said decree was preferred by the respondent No.2/defendant, however, no interim relief was granted therein and in the FIR, challan was presented without taking into consideration the civil court decree passed in favour of the petitioners and notice was issued to AG Punjab only.

On 24.03.2017, this Court directed the trial court to adjourn the proceedings beyond the date fixed before this Court and since thereafter, the matter has seen numerous adjournments also because of COVID-19 pandemic.

No reply/affidavit has been filed by the respondents and in such circumstances, when the case is pending for 6½ years approximately, this Court proceeds to decide the case on merits on the basis of oral and documentary evidence placed on record.

Learned counsel for the petitioners contended that in the civil suit, it has come on record that on demarcation by the Kanungo, it was found that the property in dispute falls in Rect. No.29, Killa No.23 measuring 583 Sq.yards which belonged to respondent No.2/defendant which was purchased on 16.10.1991. However, there are no plots as mentioned i.e., plots No.77, 76 and 78, on the spot and the subject property is far away from the property of respondent No.2. The petitioners produced site plan Ex.P1, sale deeds (Ex.P2 to P4), sale deeds pertaining to plots No.79, 133 and 192 as Ex.P5 to P7, site plan (Ex.P8) and jamabandi (Ex.P9). They further examined Krishan Kumar PW3, Bhupinder Singh PW4 etc. who deposed that they are owners in possession of plots adjoining to the suit property and that they are owners in

possession of plots No.78, 26, 181 & 30, respectively and that respondent No.2/defendant has no concern whatsoever with their property and the property of the petitioners. Respondent No.2/defendant, along with Munish Khanna, had purchased the property falling in the streets from their erstwhile owners and on the basis of the sale deeds, they are trying to take the forcible possession of the property of the petitioners.

It is further contended that respondent No.2 has misused his links with the local police to get FIR registered against the petitioners on 27.05.2015, a day after the decision of the civil suit by mis-stating that the civil suit is still pending.

I have heard learned counsel for the parties and gone through the record.

It is well settled that the inherent powers of this Court under Section 482 CrPC could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court "*State Of Haryana And Ors vs. Ch. Bhajan Lal And Ors.,1990 SCR Supl. (3) 259*" held that the High Court can quash the FIR to protect the accused from malicious prosecution when it is evident that criminal proceeding has been instituted with mala-fide intention to harass the person. The Apex Court framed guiding principles which should be followed by this Court in exercise of its inherent power vested by Section 482 CrPC to quash the pending criminal proceedings in cases where the allegations made in the first information report, 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. Besides, the allegations in the

FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying the investigation by the 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. It was also held that 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 grudges, such criminal proceedings can be quashed.

In the present case, once the civil suit has been decreed in favour of the petitioners, on the basis of the documentary evidence led by the parties, no question of initiation of criminal proceedings, on the same point, can be permitted to continue as it is nothing rather these are criminal proceedings instituted with mala fide and ulterior motive to wreak vengeance on the petitioners. The *mala fide* of the respondent No.2 is writ large that after losing the civil suit before the civil court on 26.05.2015, the respondent No.2, haphazardly managed to influence the police authorities and got an FIR lodged against the petitioners alleging that the petitioners are unauthorisedly entering into the peaceful possession of the land allegedly owned by respondent No.2. However, the dispute as to ownership of the land stands proved by the petitioners by leading documentary evidence which has consequently culminated into passing of a decree in favour of the petitioners. That being so, it does not lie in the mouth of respondent No.2 to fight back and register criminal proceedings, which he had lost in the civil suit.

Having said so, the present petition is a fit case where the allegations made in the FIR do not *prima facie* constitute any offence or make

out a case against the accused and that the contents of the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) CrPC since the criminal proceedings have been instituted with an ulterior motive for wreaking vengeance on the accused.

Accordingly, this petition is allowed and the FIR (Annexure P2) along with all the consequential proceedings stands quashed.

10.01.2023
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No