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

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**CRM-M-20427-2022
Reserved on : 16.08.2023
Pronounced on : 03.10.2023**

Gurinder Singh Gill and others**..... Petitioners**

versus

State of Punjab and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. M.L. Saggar, Senior Advocate with
Mr. Rohit Joshi, Advocate
for the petitioners.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. Abhishek Soha, Advocate
for respondent No.5.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 0153 dated 01.12.2021, registered for offences punishable under Section 432 IPC and Section 70 of the Northern India Canal & Drainage Act, 1873, at Police Station Ladhuwal, District Ludhiana.

2. The petitioners are facing prosecution in the aforesaid FIR. The contents of which are as under:-

“To, Police Commissioner, Ludhiana. Subject:-
Action regarding taking illegal possession of land by illegally disturbing the location of demarcation of Birmi Drain at Village Phagla and removal of pillars of demarcation. On the subject cited above, the Sub Divisional Officer, Phillaur Bandh Sub

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Division, Ludhiana has reported that the demarcation of the above mentioned drain was conducted in October, 2019 and the pillars were affixed at the spot but the below mentioned persons have removed the pillars and took illegal possession of the land. The notices have also been issued to this persons about it but these persons have neither received the notices nor they have vacated the encroached area. 1. Shri Gurinder Singh son of Manjit Singh Village Phagla, District Ludhiana 2. Shri Iqbal Singh son of Sohan Singh Village Phagla, District Ludhiana 3. Shri Balbir Singh son of Tara Singh Village Phagla, District Ludhiana 4. Shri Balwant Singh son of Tara Singh Village Phagla, District Ludhiana. Therefore, it is requested that strict legal action be taken against the abovesaid accused persons under clause (1) and (2) of Section 70 of the Northern India Canal & Drainage Act, 1873 and the directions be issued to the Incharge, Police Post, Hambran, SHO, Police Station, Laduwal to register the case against these persons so that the illegal possession over the land of the Birmi Drain be removed. Northern India Canal Drainage Act 1873 Part 10 of offence and penalties 70. Offences under this Act;-whoever without proper authority and voluntarily does any of the acts following that is to say 1) damages alters enlarges obstructs any canal or drainage work; 2) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used penalty shall be liable on conviction before a magistrate of such class as the state government directs in this behalf to a minimum fine of five thousand rupees but not exceeding fifty

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thousand rupees or to imprisonment not exceeding six month or to both. This is for your information and necessary action. Sd/- Rakesh Kumar Executive Engineer, Ludhiana Water Drainage Division, Ludhiana.”

3. Counsel for the petitioners submits that the allegations levelled against the petitioners are manipulated and are result of political vendetta. Petitioners are supporters of Akali Dal and have been booked during the time their opposite party was in power on the basis of frivolous and false allegations. Counsel for the petitioners further submits that in view of reply filed by way of affidavit of Executive Engineer, Ludhiana Drainage Division, Ludhiana dated 15.02.2023, it has been admitted by the Government Officials that the land is in possession of department, thus the impugned proceedings initiated against the petitioners cannot be allowed to continue.

4. Learned State counsel does not dispute the fact that as per the affidavit which has been filed, now the land stands cleared of any encroachment and the land is in possession of the department.

5. Counsel for the respondents are not in a position to dispute that as on date it is the department of State who is in possession of the drain and the canals thereof.

6. I have heard counsel for the parties and have gone through the records of the case.

7. The dispute relates to drain which was dugged to rescue water effected agriculture lands near Budha Nallah. In view of the lands being effected by water, the drain was dug to drain out the

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surplus water to Budha Nallah leading further to the river Satluj. The allegation levelled against the petitioners as per FIR is that they damaged the pillars affixed on the spot which were affixed after demarcation was conducted in October 2019 and was further claimed that they have illegally encroached upon the land of the drain.

8. Section 432 of IPC, 1860 and Section 70 of the Northern India Canal & Drainage Act, 1873 read as under:-

“432 Mischief by causing inundation or obstruction to public drainage attended with damage.—Whoever commits mischief by doing any act which causes or which he knows to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

70. Offences under Act.- Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:--

- (1) damages, alters, enlarges or obstructs any canal or drainage- work;
- (2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work;
- (3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage- work;
- (4) being responsible for the maintenance of a water- course, or using a water- course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the

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authorised distribution of the water therefrom, or uses such water in an unauthorised manner;

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used

(6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by the State Government for entering or navigating such canal;

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal and of vessels thereon;

(8) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him;

(9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour;

(10) destroys or moves any level- mark or water-gauge fixed by the authority of a public servant;

(11) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage- work contrary to rules made under this Act, after he has been desired to desist therefrom;

(12) violates any rule made under this Act, for breach whereof a penalty may be incurred; Penalty. shall be liable, on conviction before a Magistrate of such class as the State Government directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both.”

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9. There is no allegation in the FIR that drain was ever inundated or obstructed. It is also not the case that petitioners caused any act to constitute any ingredient of Section 70. Allegation was of encroachment and of removal of pillars.

10. The petitioners as per the reply filed by the State were issued notice for removing illegal possession from the lands within 07 days on 24.05.2021. Now, it has come on record as admitted by the State that the illegal encroachment stands removed and the boundary pillars stand reinstalled after re-demarcation of the drain was conducted on 14.11.2022 by the revenue department.

11. In view of above, this Court finds that once the encroachment, if any, stands removed and the State has come in possession of the drain land and has re-erected boundary pillars, it will be in the interest of justice that the impugned FIR is quashed.

12. Consequently, the present petition is allowed. FIR No. 0153 dated 01.12.2021, registered for offences punishable under Section 432 IPC and Section 70 of the Northern India Canal & Drainage Act, 1873, at Police Station Ladhuwal, District Ludhiana and all the proceedings subsequent thereto are ordered to be quashed qua petitioners.

(PANKAJ JAIN)
JUDGE

03.10.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No