

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

CRM-M-36845-2015
Date of Decision: 21.03.2023

SUCHA SINGH AND ANOTHER

...Petitioners

Versus

PARAMJIT KAUR AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Pardeep Singh, Advocate
for Mohd. Yousaf, Advocate
for the petitioners.

HARSH BUNGER, J. (ORAL)

The petitioners have filed this petition under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), seeking quashing of order dated 15.05.2015 passed by learned Additional Sessions Judge, Gurdaspur (Annexure P-2), whereby, the revision petition filed by the petitioners against order dated 08.01.2015 (Annexure P-1) passed by learned Sub Divisional Magistrate, Gurdaspur, has been dismissed. The petitioners have also challenged the order dated 08.01.2015 (Annexure P-1) passed by Sub Divisional Magistrate, Gurdaspur; on the application, seeking restoration of complaint under Section 145 of the Cr.P.C., filed by the petitioners.

2. Briefly, the petitioners filed a complaint under Section 145 of the Cr.P.C., wherein it was pleaded that they along with their brothers namely, Randhir Singh and Kashmir Singh, were joint owners of equal share

of 1/2 share in the land comprised in *Khetwat No.173* and *174 Khatauni 246* to *251, Rect. 14 Killa 2/2 (3-0), 3(8-0), 4(8-0), Rect. 9 Killa 19(7-18), 12/1 (3-5) 12/2 (2-17), 22(8-0), 23(8-0), Khasra No.17 (0-11), Rect. No.9 Killa 8/2 (2-17), 13(7-18), 18(8-0), Rect. 32 Killa 4/1 (3-16), 5/2 (0-14), 7/2 (2-13)* measuring *75 Kanals 9 Marlas* as entered in Jamabandi for the year 2006-2007 situated in the revenue estate of Village Manepur, Hadbast No.134, Tehsil and District Gurdaspur. It was stated that one of the brothers of the petitioners namely, Kashmir Singh had died issueless and had no wife; accordingly, the mutation regarding succession to his estate was sanctioned in favour of the petitioners and their brother Randhir Singh. The petitioners claim themselves to be in possession of the share of their deceased brother Kashmir Singh. It was alleged that the respondents, without any right and in a clandestine manner, in connivance with the revenue officials, had got sanctioned the mutation regarding the share of Kashmir Singh (since deceased), claiming themselves to be the widow, daughters and sons of Kashmir Singh. It was stated in the complaint that the said mutation was illegal, null and void and not binding on the rights of the petitioners. It was further stated that the respondents never came in possession of the land in question nor they ever resided in Village Manepur and they being total stranger, were not the legal heirs of deceased Kashmir Singh and mutation No.2031 was got sanctioned only to grab the land and cause loss to the petitioners herein. It is further stated in the complaint that the respondents want to take forcible possession of the land comprised in *Rect. No.9, Killa 18 South (7-0)* and *Rect. 32 Killa 7/2 East (0-18)*, which the petitioners claim to be in possession of. It was stated in the complaint that there was an

apprehension of breach of peace; accordingly, the petition was filed before the Court of Sub Divisional Magistrate, Gurdaspur.

3. It appears that the above-said complaint under Section 145 of the Cr.P.C., was dismissed for non-prosecution on 08.11.2013.

4. Thereafter, an application seeking restoration of the complaint was filed before the same Court; however, the same was also dismissed vide order dated 08.01.2015 (Annexure P-1) passed by learned Sub Divisional Magistrate, Gurdaspur, by observing as under :-

“Upon the complaint given by the complainant respondents were issued notice/registered notice. No one came present from the respondents. Considered. This case has already been dismissed for non prosecution by this court vide order dated 08.11.2013. Complainant has to file a case of partition in the competent court for obtaining possession. There is no merit in the complaint. So the complaint is dismissed. Order pronounced. File be consigned to record room after compliance.”

5. Thereafter, the petitioners herein challenged the order dated 08.01.2015 passed by learned Sub Divisional Magistrate, Gurdaspur, by way of filing a Revision Petition before the learned Additional Sessions Judge, Gurdaspur; however, the same was also dismissed vide order dated 15.05.2015 (Annexure P-2), by holding as under :-

“8. After hearing the respective contentions of the learned counsel for the party No.1/Revisionists and having carefully gone through the file, I have of this considerable view that the instant criminal revision is without any merit. From the perusal of file it depicts that the case under revision has been instituted on dated 12.07.2013 before the court of Sh. Manmohan Singh Kang, PCS, Sub Divisional Magistrate Gurdaspur. The case was

remained pending for service of party No.2/respondents, but the party No.1/Revisionists had availed seven adjournments in this regard. On 23.10.2013 the party No.1/revisionists had not put his appearance before the learned lower court and after giving so many opportunities to proceed the case the learned lower court dismissed the petition for want of prosecution and consigned the same to the record room.

9. Aggrieved there from the Party No.1/revisionists filed an application for restoration of the proceedings dismissed on 08.11.2013 on dated 18.12.2013. Again the application was remained pending because Party No.1/revisionists nor his counsel has put his appearance before the learned lower court and availed numerous opportunities in this regard, but the case was adjourned for awaiting appearance. The zimni orders of the restoration application also depicts that inspite of availing numerous adjournments counsel for the revisionists has not argued the matter before the learned lower court. At the end, learned lower court in absence of the Party No.1/revisionists disposed of the matter finally but with the liberty that the Party No.1 should approach the competent court to avail appropriate remedy.

10. Therefore, without elaborating further the present revision petition is without any merit. From the perusal of record it depicts that earlier the application was dismissed in default on 08.11.2013 and against that an application for restoration was filed on 18.12.2013. But under criminal law there is no provision related to restoration of application. In the absence of specific challenged to the order vide which the complaint/application was dismissed in default by the learned Magistrate, the present revision petition is not maintainable as the restoration application before the learned Magistrate was also not maintainable.

Therefore, the present revision petition is liable to be dismissed, without meritorious.”

6. Accordingly, the petitioners have filed the present petition before this Court.

7. Learned counsel for the petitioners submits that the learned Courts below have erred in law and facts in passing the impugned orders. It is submitted that the learned Courts below have failed to consider and appreciate that there was an apprehension of breach of peace and a dispute may take place upon the disputed place. It is further submitted that the learned Additional Sessions Judge, Gurdaspur, has wrongly dismissed the revision petition on the ground of maintainability and in fact, it was required to be allowed and the case should have been remanded to the Court of learned Sub Divisional Magistrate, Gurdaspur, for deciding afresh on merits. Accordingly, it is prayed that the petition may be allowed by setting aside the impugned order and proceedings under Section 145 of the Cr.P.C., may be ordered to be initiated.

8. I have heard learned counsel for the petitioner and perused the paper-book as well as the impugned order.

9. In the instant case, the petitioners had filed a complaint under Section 145 of the Cr.P.C., claiming that there was an apprehension of quarrel and breach of peace on account of land dispute between the petitioners and the respondents herein.

10. The petitioners claim themselves to be the co-sharer in the land in question and it is further claimed that they are in possession of the share of their deceased brother Kashmir Singh. On the other hand, it appears that the respondents herein have got the mutation sanctioned in their favour

regarding the estate of deceased Kashmir Singh, by claiming themselves to be the legal heirs of deceased Kashmir Singh.

11. Concededly, the complaint filed by the petitioners came to be dismissed for non-prosecution by the Court of Sub Divisional Magistrate, Gurdaspur, vide order dated 08.11.2013. Thereafter, an application for restoration of the said complaint was filed; however, the same was dismissed vide order dated 08.01.2015 (Annexure P-1) passed by learned Sub Divisional Magistrate, Gurdaspur.

12. A perusal of the paper-book shows that the petitioners had not challenged the order dated 08.11.2013 passed by learned Sub Divisional Magistrate, Gurdaspur whereby the complaint was dismissed for non-prosecution; rather, the Revision Petition was filed by the petitioner challenging the order dated 08.01.2015 (Annexure P-1), whereby the application seeking restoration of the complaint has been dismissed.

13. It is well settled that under the criminal law, there is no provision enabling the Court to restore the complaint, which was dismissed for non-prosecution by the same Court.

14. In the considered view of this Court, in the absence of any challenge to the order dated 08.11.2013, whereby the complaint filed by the petitioners was dismissed for non-prosecution, the revision against an order dismissing the application for restoration of the complaint, would not be maintainable as the restoration application before the learned Magistrate, who had dismissed the complaint for non-prosecution; was itself not maintainable before the said Court.

15. Accordingly, I do not find any illegality or perversity in the impugned order dated 15.05.2015 (Annexure P-2) passed by learned

Additional Sessions Judge, Gurdaspur and the present petition, being bereft of any merit, is hereby dismissed.

16. All pending application/s, if any, shall also stand closed.

March 21, 2023
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(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No