

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41412-2015 (O&M)

Date of decision: 14.09.2023

Jaspal Kaur

...Petitioner

VS

Gurmukh Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Bhupeshwar Jaswal Advocate for
Mr. Berjeshwar S. Jaswal, Advocate,
for the petitioner.

Ms. Tanvi Talwar, Advocate for
Mr. Nitin Kaushal, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Challenge herein is to an order dated 08.10.2015 (Annexure P-8) passed by learned Additional Sessions Judge, Jalandhar, whereby summoning order dated 22.01.2014 (Annexure P-6) in Complaint Case No.302-1-12, under Sections 120-B, 447, 427, 379, 411, 506, 114, 117 and 148 read with Section 149 of the Indian Penal Code, 1860 (for short 'IPC'), was set aside and revision petition was accepted.

2. Succinct facts of the case, as noted by learned Additional Sessions Judge, Jalandhar, in the impugned judgment, are as under:

"2. It is the case of the respondent/complainant Jaspal Kaur filed in complaint against the revisionist/petitioner Gurmukh Singh and others alleging that the accused No.1 and 2 Gurmukh Singh and Gurbir Singh are her brothers, accused No.3 to 5 are her nephews, accused No.6 and 7 are her sisters-in-laws being the wives of accused No.1 & 2. Accused No.9 is the sister of accused No.7 (i.e., she is sister-in-law of the brother of complainant), accused No.10 is husband of accused No.9. Accused No.8 and 11 have friendly relations with the other accused, while accused No.12 is posted as ASI at P.S. Bhogpur.

3. It is the case of the complainant that her father owned 96 kanals 13 marlas in village Chak Jhandu (Chak Sondha), District Jalandhar. After the death of her father, her brother Gurmukh Singh got mutation No.504 sanctioned in respect of estate of his father on the basis of unregistered Will in favour of present accused No.1 & 2 being sons of Daulat Singh, Jagdeep Singh and Sandeep Singh sons of Lakha Singh son of Daulat Singh and Joginder Kaur widow of Lakha Singh and Gurmej Kaur wife of Daulat Singh. The complainant claims that mutation on the basis of Will dated 05.06.1988 of late Daulat Singh was got entered and

sanctioned in the revenue record while keeping her in the dark and by practicing fraud upon her. Later, when her mother Gurmej Kaur died on 30.10.1997, then accused No.1 Gurmukh Singh forged and fabricated another Will dated 09.11.1990 allegedly executed in his favour by his mother Gurmej Kaur. The complainant claims that she filed civil suit challenging both the Wills set up by her brothers to claim the estate of her father and mother to her exclusion. The complainant claims that her suit was decreed by the court of Miss Sanjeeta, CJJD, Jalandhar vide judgment dated 11.09.2008 and she was held to be co-owner in the land in question to the extent of 1/5th share. The appeal filed against the said judgment was dismissed by the Appellate Court vide judgment dated 09.09.2011. The complainant claims that she thereby received 1/5th share out of the land measuring 96 kanals 13 marlas owned by her father and 1/20th share out of the property left by her mother Gurmej Kaur. The complainant alleges that she even got one FIR No.19 dated 18.11.2002 under Section 420, 465, 467, 468, 471 IPC registered against all the accused at P.S.Divn. No.4, Jalandhar. The complainant alleges that after decision of the civil court, mutation has been sanctioned in her favour qua land measuring 22 kanals. She further claims that she vide sale deed dated 07.03.2012 sold one kanal of land to Paramjit Kaur daughter of Swarna Ram, resident of Mohalla Langrian, Goraya and mutation was sanctioned in the name of the said Paramjit Kaur. The complainant claims that in May 2012 she raised a 165' long and 2' high wall to protect her paddy crops from stray animals. Complainant alleges that she had sown paddy crops in the area of 1 kanal 14 marlas out of the 22 kanals of land falling to her share.

4. *The complainant alleges that on 14.10.2012 at 5:00 PM, accused No.1 Gurmukh Singh armed with a Daat, accused No.2 Jagroop Singh armed with a Kirpan, accused No.6 Surinder Kaur armed with a Datar, accused No.7 Randhir Kaur armed with a Kirpan, accused No.8 Accharjit Singh armed with a Kirpan, accused No. 11 Jatinder Singh @ Kaka armed with a Kirpan and accused No. 12 Parminder Singh of P.S. Bhogpur armed with a revolver along with some unknown persons who were also armed with deadly weapons came to the spot. They destroyed the paddy crops of complainant and her husband. At that time, accused Gurmukh Singh exhorted his co-accused to destroy the paddy crops of the complainant and to demolish the wall constructed by the complainant. He further asked the accused to take away the bricks. The complainant alleges that accused Gurmukh Singh who was on his Mohinder 275 Tractor along with trolley and accused Gurbir Singh who had brought his new Holland Tractor. They used the said tractors along with Gurbir Singh, accused No.2, Dilraj Singh accused No.4, Kirpal Singh accused No.5, Gurdev Kaur accused No.9, Dalbir Singh accused No.10 to remove the bricks from the spot by loading the same in the tractor trolleys. Complainant alleges that the accused stole 3000 bricks owned by her and they thereby caused the loss of Rs. 12,600/-. The complainant alleges that the entire occurrence took place in the presence of ASI Parminder Singh who instigated the accused. The complainant alleges that the accused not only committed theft, but they also destroyed her paddy crops valued at Rs.25,000/-. The complainant alleges that the time of occurrence, her husband Mohinder Singh, the vendee Paramjit Kaur daughter of Swarna Ram and Jarnail Singh son of Jagir Singh were present. The Sarpanch and Paramjit Kaur wife of Mohan Singh also reached the spot. They requested accused No.12 and the other accused not to take law into their hands, but accused No.12 threatened to implicate the complainant party in false criminal cases under the NDPS Act. Accused also used filthy language and even abused the complainant and her husband and threatened to kill them.*

5. *The complainant alleges that regarding the said occurrence, Gurmukh Singh, Gurbir Singh and other co-accused got one false case*

registered against her and the others vide FIR No. 124 under Section 447, 427, 506, 511 IPC at P.S.Bhogpur. The complainant claims that even though the case was registered against her and her husband, no case was registered on her complaint against the accused. The complainant claims that she even moved application to the superior police officers, but no action has been taken. Therefore, the complainant filed the instant complaint."

3. Learned counsel for the petitioner would urge that the petitioner herself stepped in the witness box as CW1 and deposed all the facts in support of complaint filed by her before learned Court below. She also examined Jarnail Singh, Ex Panch of the Village Chak Jhandu as CW-2, whose wife is working Sarpanch of the village. He supported the version of the petitioner.

4. He next submits that not only oral testimony, but documentary evidence viz. Civil Court judgments and decrees, mutations, sale deeds, photographs, Postal receipts and FIR i.e. Ex C1 to C-16, was also duly adduced before the trial court.

5. He further argues that basis of the evidence aforesaid, learned trial Court being satisfied came to the prima facie conclusion that the accused armed with deadly weapons had come and destroyed paddy crop, removed wall, took away the bricks, caused loss to the petitioner in connivance and conspiracy with each other, used filthy language, threatened to kill her. Accordingly, the accused were rightly summoned to face trial under Sections 120-B, 447,427,379,411,506, 114,117 and 148 read with Section 149 IPC.

6. *Per contra*, learned counsel appearing for the respondent strenuously opposes the prayer made in the petition and submits that learned revisional Court has rightly passed the impugned order dated 08.10.2015 (Annexure P-8) while setting aside the summoning order dated 22.01.2014 (Annexure P-6) and there seems no infirmity in the order impugned herein.

7. I have heard learned counsel for petitioner and perused the case file.

8. Learned trial Court passed order dated 22.01.2014 (Annexure P-6) summoning total 12 accused in the complaint, including present respondent, by giving following reasoning:

"6. After perusing the documents placed on record by the complainant, this court is of the view that from the oral as well as documentary evidence led by the complainant, it has been clearly established on the file that all the accused armed with deadly weapons came to the fields of the complainant and destroyed the paddy crops sown by the complainant. All the accused persons removed the wall constructed by the complainant and they have stolen bricks from the fields and have caused as loss to the complainant. All the accused have committed the theft and destroyed the paddy crops after in connivance and conspiracy with each other. During the whole occurrence, all of them used filthy language and even abused the complainant and further threatened to kill her. Therefore, from the perusal of entire record available on the file, this court is of the view that all of the accused persons have committed the offence punishable under section 447, 427, 379, 411, 506, 148, 149, 114, 117 and 120 of Indian Penal Code, hence prima facie case is made out to summon the accused for trial under section 447, 427, 379, 411, 506, 148, 149, 114, 117 and 120B of Indian Penal Code. Accordingly, all the accused be summoned for trial under sections 447, 427, 379, 411, 506, 148, 149, 114, 117 and 120B of Indian Penal Code."

9. Aggrieved by the aforesaid summoning order, respondent herein filed a revision petition, which was allowed by the learned Additional Sessions Judge, Jalandhar, vide impugned judgment dated 08.10.2015 (Annexure P-8).

10. Impugned order dated 08.10.2015 is, *inter alia*, premised on the following reasoning:

"13. In so far as offence of rioting under section 148 IPC is concerned, it is pertinent to note that a State case under section 447/427/506/511 read with section 34 IPC was registered against the complainant, her husband and CW2 of this case Jarnail Singh son of Jagir Singh @ Jagiri Ram. The complainant filed the present cross complaint more than one month after the occurrence on 26.11.2012. In the complaint all the members of the family of the revision- petitioner including his family friends and the IO of the State case have been made accused. The complainant alleges that the accused were armed with deadly weapons at the time of occurrence. The use of these weapons by any of the accused in furtherance of their common object is not shown. Further more as already discussed above the complainant has failed to show her ownership over the plot of land measuring 01 Kanal 14 Marlas on which paddy crop was sown. She has also failed to prove the existence of the wall allegedly demolished by the accused. In these circumstances the complainant has failed to show that the accused persons who were allegedly armed with weapons had any common object. Since the main offences under section 447/427 IPC are apparently not made the offence under section 148 IPC is also clearly not made out. Moreover when the State case has already been registered against the complainant, her husband and CW2 Jarnail Singh, the present complaint clearly appears to an attempt to rope in not only the family members and friends of the revision-petitioner but also IO of the State case. In so far as offences under section 114/117 IPC are concerned, they are only subsidiary to the main offences.

14. In the light of the above discussion the offences under section 447/427/379/411/148/149/114/117 506 IPC do not appear to be made out. The impugned summoning order dated 22.01.2014 is therefore set aside.

The revision petition is accordingly accepted. Revision file be consigned to the record room while the file of the trial court be returned with the copy of this order. Parties are directed to appear before the learned trial court on 29.10.2015. The learned trial court is called upon to pass a fresh order in the light of the observations in the order."

11. I have perused the appellate court judgment and, I am of the view *that same* is founded on cogent reasoning after appreciating the evidence on record in its right perspective. Findings rendered therein are based on a correct evaluation of the evidence and do not suffer from any flaws or illegality.

11.1. No new arguments have been raised other than reiteration of the standtaken before learned Court below.

12. I am in agreement with the view take by the learned Additional Sessions Judge. Vide his order, impugned herein, he has rightly red flagged the illegalities and contradictions of the summoning order passed by the trial court.

12.1. Trial court summoned ten family members, including women and friends, and accused No. 12 (a police officer), to face trial for various offenses under the Indian Penal Code (IPC). The complainant alleged possession of 22 Kanals of land as her inheritance and that she planted paddy crop on 01 Kanal 14 Marlas of it. However, she doesn't specify the khasra numbers of her possession or where the crop was planted. She relies on court judgments (Ex C1 and Ex C2) in her favor but admits that an appeal against Ex C2 is pending.

12.2. Qua the alleged offences, an FIR regarding the same incident was duly registered.

12.3. That aside, the complainant provides a Jamabandi for 2007-08 (Ex C4) showing a mutation in her favor but doesn't demonstrate exclusive possession of the land or specific khasra numbers. She fails to prove when and how she gained possession.

12.4. The offense of criminal trespass (section 447 IPC) requires proof of exclusive possession over the specific khasra number where the alleged trespass occurred, which she doesn't establish. Additionally, the accused are charged under section 427 IPC for allegedly demolishing a wall she claims to have constructed.

However, the complainant doesn't specify the khasra number or location of this wall, and

her evidence is insufficient to prove its existence or demolition. She doesn't provide details about the construction date, laborers, or material purchase, and her witness (CW2) is an interested party. No independent testimony supports the wall's construction, making it challenging to establish the offense.

12.5. Regarding the offenses under sections 379/411 IPC, the complainant accuses the accused of stealing 3000 bricks purchased with receipt Ex C6. However, she fails to provide photographic evidence of the wall or its demolition. The receipt Ex C6, issued by a person not in the business of selling construction materials, lacks proper authentication. The complainant does not summon the issuer of the receipt to verify it. Without substantial proof of ownership over the stolen bricks, their theft, or recovery, the offenses under sections 379/411 IPC are not established.

12.6. To sum up, the complainant has not prima facie demonstrated her exclusive possession of the disputed land, the existence or demolition of the alleged wall, or ownership of the stolen bricks, thereby failing to establish the offenses under various sections of the IPC.

13. Thus, no grounds for interference are made out.

14. Instant revision petition is hereby dismissed.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

14.09.2023
Ajay

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