

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

CRM-M No.43704 of 2015 (O&M)

Date of decision : 14.09.2023

Satpal Singh

..... Petitioner

versus

State of Punjab & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. T.P.Singh, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. K.S. Sidhu, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

1 By way of present petition, the petitioner is seeking quashing of
FIR No.109 dated 03.12.2015, registered for offences punishable under
Sections 447/511 IPC at Police Station Sadar Banga, District Shaheed
Bhagat Singh Nagar, Punjab.

2 The FIR was registered on the statement of Surinder Pal @
Bhura S/o Parkash Ram wherein he alleged as under :-

*“Stated that I am resident of the above mentioned address and I do
cultivation. We have land measuring 6 killas situated within the area of
village Khamachon on Mahil Gehllan Road. We are in possession of this
land since 1979 and we are cultivating the same. This year also, we have
sowed rice in area measuring 4 killas and corn in two killas and thereafter
harvested the same. Few years back, some portion out of the said land was
purchased by Mohinder Kaur wife of Harbans Singh caste Jatt, resident of
Bhor Majara, Police Station Sadar Banga. We came to know about it.
Thereafter Mohinder Kaur went to America. We have filed case in the
Court in this regard. Mohinder Kaur has executed power of attorney in*

favour of Satpal Singh son of Lachman Singh caste Jatt, resident of Thenga, Police Station Phillaur, District Jalandhar, who is her Kuram (sambandhi). (sic). Satpal Singh has been trying to take possession of our land, due to which our entire family is protecting our land day and night. Yesterday i.e. 02.12.15 at about 10/11 PM, I and my friend Sanjay son of Kohlu, resident of Mahil Gehllan and Mangat Ram son of Joginder Ram, caste Ad-dharmi, resident of Mahil Gehlan went towards our fields. Satpal Singh above mentioned on farmtrack tractor 60 with cultivator, Satnam Singh alias Resham Singh caste Jatt, resident of Aur, Police Station Mukandpur on Mahindra tractor 475 of red color with generator were sowing the fields after entering the same. Alongwith them, Harjinder Singh alias Jinder son of Paramjit Singh caste Jatt, resident of Garcha, Police Station Rahon and Harpreet Singh alias Lali son of Sodhi Singh caste Bajigar, resident of Aur were present in Innova car bearing no. PB 32 F 0024 and were trying to take illegal possession of our land with ill intention. We identified them in the lights of tractors and cars. On our raising noise, they all ran away to Banga side in their Innova car leaving behind their above mentioned tractors. Keeping in view the entire circumstances, we were going to Police Station for giving information.”

3 Learned counsel for the petitioner submits that the petitioner is attorney holder of Harbans Singh and Mohinder Kaur who are owners of the land in dispute. The Civil suit was preferred by the petitioner acting as attorney holder of Harbans Singh and Mohinder Kaur claiming decree of permanent injunction to the effect that respondent No.2 i.e. the complainant be restrained permanently from interfering in their peaceful, lawful, continuous and uninterrupted possession over the land measuring 63 kanal 17 marlas comprising khasra No.14//8/2, 14//6, 14//7, 19//25/2, 18//3/2, 14//3/1, 4//24, 14//15, 14//3/2, 4//18/2, 4//17, 4//23 bearing khata No.53/52/59, 54/53/60, 55/54/61, 56/55/62, 196/193/207, 205/202/217, 207/204/219, 220, 221, 268/265/284, 285/282/302, 294/291/326 as entered in the jamabandi for the year 2013-2014 and ad-interim positive injunction was granted vide order dated 14.09.2015 and it was thereafter that the present FIR got registered wherein the petitioner was alleged to have

attempted trespass over the suit land. It has been further contended that in a suit filed by complainant i.e. Civil suit No. 111/15 instituted on 29.05.2015 titled as ***Surinder Paul Vs. Sarbjit Singh & ors.*** in which Mohinder Kaur and Harbans Singh both have been impleaded as defendants. Injunction was declined observing as under :-

“10. From the documents placed on record by defendants no.2 and 3, this fact becomes amply clear that part of property which was mortgaged to Parkash Ram i.e predecessor in interest of plaintiff has already been got redeemed and possession of that part has also been delivered to Surjit Kaur. Further, perusal of orders passed by the SDM/Collector shows that these orders were passed in favour of defendants in the presence of predecessor in interest of plaintiff and thus, the plaintiff was fully aware of the passing of the orders by the SDM/Collector as well as pendency of application filed by defendants no.2 and 3 for issuance of warrants of possession. However, all these facts have been concealed by the plaintiff at the time of filing of present suit. Relief of injunction is an equitable relief. It is settled principle of law that one who seeks equity must do equity. One who does not come to the Court with clean hands and suppresses material facts is not entitled to the discretionary relief of injunction. In the present case, material facts have been concealed by the plaintiff for the reasons best known to him. In such eventuality, plaintiff is not entitled to the equitable relief of injunction. Therefore, in view of discussion made here-in-above, it is to be stated that the plaintiff is not entitled to any relief of injunction as material facts have been concealed by the plaintiff. Therefore, application filed by plaintiff under Order 39 Rules 01 and 02 is dismissed. However any observation made by me while disposing of present application shall not be construed as an expression of opinion on the merits of the main case. Application stands disposed off accordingly.”

4 Apart therefrom, counsel for the petitioner further relies upon the order dated 18.08.2022 passed by Civil Judge (Junior Division), SBS Nagar whereby the complainant has been held guilty of having violated order passed by the Civil Court under Order 39 Rules 1 & 2 of CPC in the application preferred by the petitioner on behalf of Mohinder Kaur and another and punished under Order 39 Rule 2-A CPC.

5 Mr. K.S.Sidhu, Advocate appearing for respondent No.2, however, submits that in fact it is the complainant, who is in possession of the land and under the garb of interim order, the petitioner acting as attorney holder of Mohinder Kaur and Harbans Singh has tried to trespass over the suit land which resulted in the registration of the present FIR.

6 Learned State counsel on the other hand submits that after investigation the prosecution agency has filed report under Section 173 (2) Cr.P.C. on 06.01.2016 and as per the investigation the petitioner was indeed trying to take illegal possession and thus was rightly booked for offence punishable under Section 447/511 IPC.

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

8 The parameters with respect to exercise of jurisdiction under Section 482 Cr.P.C. at the hands of this Court while entertaining petition for quashing of the FIR stands well laid by Apex Court in ***State of Haryana & ors. Vs. Ch. Bhajan Lal & ors., 1992 AIR (Supreme Court) 604*** holding as under :-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases 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 guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with malafide 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 Facts with respect to civil *lis* are not much in dispute being matter of record. Even if the contents of FIR are taken on their face value complainant cannot deny the fact that Mohinder Kaur is a co-sharer though the said fact is disputed by learned counsel for the petitioner who claims that Mohinder Kaur is owner.

10 Without going into the controversy this Court takes the averments made in the FIR on their face-value for the purpose of deciding the present petition. As per the same, Mohinder Kaur is co-owner of the

land she is alleged to have attempted criminal trespass upon. Petitioner is being booked for having attempted to commit criminal trespass punishable under Section 447. Section 447 reads as under:-

“447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.”

11 Criminal trespass has been defined under Section 441 in the following manner:-

“441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass.”

12 Thus, the question arises whether the petitioner can be said to have entered into or upon property in possession of another when she admittedly is co-sharer in the said property. Rights of co-owner same stand well laid by full Bench of this Court in *Bhartu Vs. Ram Sarup, 1981 PLJ 204* observing as under :-

“4. The inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Pb. 528, and the following propositions, inter alia, were settled:

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint

property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

13 The same has been reiterated by a subsequent full bench in [Ram Chander v. Bhim Singh, 2008\(3\) RCR \(Civil\) 685 \(P&H\)](#) holding that:-

“In order to lend weight to our conclusions, I draw upon the observations of a Division Bench judgment of this Court, relied upon and referred to in both the Full Bench Judgments, that I am called upon to interpret. While considering the nature of joint property and the *inter se* rights and liabilities of co-sharers, a Division Bench in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab 528** set out in detail the *inter-se* rights and liabilities of co-sharers in the following terms :-

"(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily

amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."

It is, therefore, apparent that a co-owner has an interest in the entire property and also in every parcel of the joint land. When a co-sharer alienates his share or a part thereof in the joint holding what he brings forth for sale is what he owns i.e. a joint undivided interest in the joint property. A sale, therefore, of land from a specific khasra/killla number, forming part of a specific rectangle number, but being a part of a joint khewat, would, in view of the nature of the rights conferred upon a co-sharer, be deemed to be the sale of a share from the joint khewat and such a vendee would be deemed to be a co-owner/co-sharer in the entire joint khewat, irrespective of the artificial divisions of the joint land into different

rectangles, khasra and killa numbers.

Another attribute of joint property is that where a co-owner in possession of a specific portion of the joint holding and recorded as such in the revenue record, transfers any right, title or interest, from the portion in his specific possession, his vendee would be entitled to protect the portion so transferred, without, however, asserting exclusive ownership to the portion so transferred and possessed, till such time as the joint estate is not partitioned.

In order to place above conclusion in perspective, I deem it appropriate to reproduce a paragraph from the judgment in *Bhartu v. Ram Sarup's* case (supra) that succinctly explains our opinion, as under :-

"6. Take another example where 'A' and 'B' jointly own a khewat in equal shares measuring 200 bighas. 'B' is in separate possession of 100 bighas of land comprised of specific khasra numbers and transfers it to 'C'. This is not disputed that in spite of this sale, 'A' continues to be a co-sharer in the land transferred by 'B'. If that is so how can it be disputed that 'C' would necessarily be a co-sharer in the remaining 100 bighas of land in possession of 'A' as otherwise it would mean that 'A' is exclusively owner of 100 bighas of land in his possession and also a co-sharer with 'C' in the remaining 100 bighas which obviously is not possible. The matter can further be illustrated by another example. 'A' and 'B' are co-sharers in the joint khewat, say of 100 bighas of land in equal shares. 'B' who is in exclusive possession of land measuring 40 bighas of land comprised of khasra Nos. 1, 2, 3 and 4 transfers two khasra numbers, that is, 1 and 2, measuring 20 bighas to 'C' specifically stating in the deed that he is in

possession of these khasra numbers as a co-sharer and is transferring his interest as such. Can it be said on these facts that 'C' has purchased anything except a co-sharer's interest in khasra Nos. 1 and 2 in spite of the fact that the sale is of specific numbers and of the specified area. The answer obviously would be in the negative and if so then the sale is obviously of a share by the co-sharer out of the joint land and nothing else."

As a result of the above discussion, I express our complete agreement with the opinion, recorded in the Full Bench in Bhartu v. Ram Sarup's case (supra)."

14 In view of above, this Court finds that no offence under Section 447/511 IPC is made out. The primary ingredient to constitute offence punishable under Section 447 and defined under Section 441 i.e. 'entering upon the property in possession of another' cannot be alleged against the petitioner.

15 Consequently, the present petition is allowed. FIR No.109 dated 03.12.2015, registered for offences punishable under Sections 447/511 IPC at Police Station Sadar Banga, District Shaheed Bhagat Singh Nagar, Punjab is hereby quashed.

16 Needless to say that anything observed herein will have no bearing on the civil *lis* pending between the parties.

(PANKAJ JAIN)
JUDGE

14.09.2023

Pooja sharma-I/Dinesh

Whether speaking/reasoned
Whether Reportable :

Yes
No