

CRM-M-7673-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7673-2017

Date of Decision: 18.05.2023

KULDIP SINGH & OTHERS

... Petitioners

Versus

STATE OF PUNJAB & ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioners.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

Mr. Ritesh Pandey, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Criminal Complaint No.33 of 2016 (Annexure P-3) (previously numbered as Criminal Complaint No.197 of 24.12.2008) filed by respondent No.2 under Sections 447/427/506/148/149 IPC as a Protest Petition in FIR No.240 dated 28.08.2006 under Sections 447/427/506/148/149 IPC at Police Station Civil Line, Batala, the summoning order dated 18.07.2009 (Annexure P-4), the fresh summoning order dated 20.10.2016 (Annexure P-5) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that respondent No.2-Janak Raj son of Puran got registered an FIR No.240 dated 28.08.2006 under Sections 447/427/506/148/149 IPC at Police Station Civil Line, Batala with the

allegations that he along with the petitioners had purchased a plot measuring 12 marlas near Guru Nanak College and with mutual understanding a 10 ft. wide street was left in the middle of the plot. He had gone out for some work and when he returned on 28.08.2006, he saw that a wall had been raised in the common street. His son Davinder Singh told him that on 27.08.2006, the petitioners who were variously armed along with certain other persons had started to demolish the gutter of sewerage and had begun to raise a wall in the street. On being stopped, he (son of the complainant i.e. Davinder Singh) had been threatened. Legal action was sought.

Based on the aforementioned complaint, FIR No.240 dated 28.08.2006 under Sections 447/427/506/148/149 IPC Police Station Civil Line, Batala came to be registered. A copy of the said FIR is attached as Annexure P-1 to the petition.

3. Pursuant to the registration of the FIR, an investigation was conducted which led to the filing of a cancellation report on 24.10.2006. It was a categorical finding that as per the record of the Department of Revenue and in the sale deed referred to in the FIR, there was no mention of any street and therefore, the accused party had not raised any illegal construction upon any land/street of the complainant and there had been no demolition of any kind.

4. Aggrieved with the filing of the aforementioned cancellation report, the complainant filed a protest petition on the same facts and allegations which was treated as Criminal Complaint No.33 of 2006 (Annexure P-3). Vide order dated 18.07.2009, the Court of the Judicial

Magistrate, 1st Class, Batala summoned the petitioners under Sections 447, 427, 506 and 34 IPC. A copy of the said order is attached as Annexure P-4 to the petition.

5. Meanwhile, the file/record of the criminal complaint which had culminated in an order (Annexure P-4) was misplaced and was therefore re-constructed. Pursuant to the said re-construction, a fresh summoning order dated 20.10.2006 was passed by the Judicial Magistrate, 1st Class, Batala and the petitioners were summoned once again under Sections 447, 427, 506 and 34 IPC. A copy of the said order is attached as Annexure P-5 to the petition.

6. The aforementioned Criminal Complaint No.33 of 2006 (Annexure P-3), the first summoning order dated 18.07.2009 (Annexure P-4), the second summoning order dated 20.10.2016 (Annexure P-5) and all subsequent proceedings arising therefrom are impugned in the present petition.

7. The learned counsel for the petitioners contends that the allegations as levelled against the petitioners are absolutely incorrect. The complainant-Janak Raj had instituted proceedings under Section 133 Cr.P.C. against the petitioners before the Sub-Divisional Judicial Magistrate, Batala. The said Court vide its order dated 05.01.2011 came to the conclusion that as per the revenue record there was no evidence of the existence of a 10 ft. street upon which the petitioners had allegedly raised any illegal construction. A copy of the said order is attached as Annexure P-6 to the petition.

He contends that the wife of the complainant, namely, Kailash Rani had instituted a suit for mandatory injunction against the petitioners seeking to remove illegal encroachments on the public street. The said civil suit came to be withdrawn by respondent No.2 being the power of attorney of his wife. The order dated 16.12.2016 is attached as Annexure P-7 to the petition.

He further refers to the fact that even in the cancellation report initially submitted in FIR No.240 dated 28.08.2006, it was finding of the Investigating Agency that as per the revenue record and the sale deed, there was no mention of any street and therefore, the question of encroachment upon the same or upon the land of the complainant at the instance of the petitioner party as also any demolition did not arise.

He contends that the present proceedings have been maliciously instituted with an ulterior motive to wreak vengeance on the petitioners as they had succeeded in a civil litigation instituted by them against the complainant party.

As regards the filing of the present second petition for quashing of the complaint and summoning order, he contends that the first one bearing No.CRM-M-5919-2017 had been withdrawn on 27.02.2017 with liberty to challenge the first summoning order dated 18.07.2009 as well along with the present summoning order.

He thus, contends that quite apparently, absolutely no offence whatsoever had been committed and the complaint along with both the

summoning orders were liable to be quashed being an abuse of the process of the Court.

8. The learned State counsel has referred to the fact that their investigation had revealed that no offence had been committed by the accused/petitioners as per the cancellation report (Annexure P-2). However, as the petitioners had been summoned to face trial by the Court, no case for quashing of the complaint and summoning orders was made out.

9. On the other hand, the learned counsel for respondent No.2/complainant has not filed a reply to the present petition. He states that the same is not needed as all the documents relied upon by the petitioners are a matter of record. He, however, contends that the second petition for quashing of the summoning order was not maintainable and even otherwise, the offences were *prima facie* established and the petitioners were liable to face trial.

10. I have heard the learned counsel for the parties at length.

11. Admittedly, the allegations pertain to the illegal encroachment/construction upon a street purportedly in the use of the complainant. Allegations have also been levelled regarding the demolition of a gutter of sewerage. A perusal of the cancellation report (Annexure P-2) and the order passed in proceedings under Section 133 Cr.P.C. (Annexure P-6) would clearly establish that there is no such 10 ft. area/street in existence at the spot upon which the petitioners allegedly carried out any illegal construction. Further, there is absolutely nothing to suggest that the demolition of any gutter of sewerage had taken place. In fact, on an identical

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cause of action, a civil suit was instituted by the wife of respondent No.2-complainant which came to be withdrawn vide order dated 16.12.2016 (Annexure P-7). On the other hand, the institution of the present criminal proceedings on account of a pending civil dispute between the parties in which the petitioner side had succeeded cannot be ruled. As regards the maintainability of the present petition, it would be relevant to mention here that pursuant to the issuance of the first summoning order, the record was lost necessitating the passing of the second summoning order. The petitioners had challenged the said summoning order vide CRM-M-5919-2017 which came to be withdrawn with liberty to file a fresh petition challenging the first summoning order as well. Therefore, no fault can be found with the conduct of the petitioners.

12. In view of the aforementioned discussion, I find considerable merit in the petition and therefore, the Criminal Complaint No.33 of 2016 (Annexure P-3) (previously numbered as Criminal Complaint No.197 of 24.12.2008) under Sections 447/427/506/148/149 IPC, the first summoning order filed on a protest petition dated 18.07.2009 (Annexure P-4), the subsequent summoning order dated 20.10.2016 (Annexure P-5) and all subsequent proceedings emanating therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

18.05.2023

JITESH

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