

254.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50938-2021

Date of decision: 31.07.2023

Surinder Singh

...Petitioner

VS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. N. S. Dandiwal, Advocate for the petitioner.
Mr. Mohit Thakur, AAG, Punjab.
None for respondents No.2 to 4.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 482 of Code of Criminal Procedure (for short "Cr.P.C") seeking quashing of order dated 24.05.2018 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Moga and order dated 29.07.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Moga, whereby the complaint filed by the petitioner against respondents as well as revision preferred against same was dismissed.

2. Succinct facts first.

3. Pleaded case of the petitioner is that an ancestral house was constructed on land measuring 12 marlas in Village Daroli Bhai qua which partition amongst brothers took place about 25 years ago. Petitioner was given his half share i.e 06 marlas. Another 06 marlas was owned by his brother-Atma Singh, who died in the year 1997. He purchased 12 Marlas of land abutting to his 6 Marlas and in this way, he had 18 Marlas of land. He constructed his house over that said land of 18 Marlas. Matter was taken to the civil court and a stay was granted. However, respondent/accused persons still forcibly tried to take possession of the land in question and even committed theft of the articles lying therein. The petitioner approached the court of learned Civil Judge (Junior Division), Moga who vacated the status quo order. Against said order, no appeal was preferred. On 17.04.2010, the petitioner returned from America and on 25.04.2010 when he along with his wife Gurcharan Kaur were present at their residential house, accused

persons along with 8/10 more persons armed with weapons attacked them. A false case was registered against him by way of an FIR. During investigation, FIR was found to be false and cancellation report was presented. Vide order dated 20.03.2012, learned trial Court ordered reinvestigation in the matter. Later on, again cancellation report was presented in the Court on 28.01.2014. The complainant filed a protest petition against the cancellation report and vide order dated 27.11.2014, learned trial Court treated the cancellation report as complaint and the same was ordered to be registered as complaint. After appreciating the evidence on record, learned trial Court dismissed the complaint vide order dated 24.05.2018. Petitioner preferred revision against the said order which was also dismissed by learned Additional Sessions Judge, Moga, vide order dated 29.07.2021. Both the orders have been impugned herein.

4. Learned counsel for the petitioner contends that the Courts below have erred in not appreciating the testimony of CW-3 Surinder Singh who is an eyewitness who had categorically deposed about the offences committed by the accused persons.

5. On the other hand, learned State counsel opposes the petition and submits that orders passed by both the Courts below are in accordance with law. During investigation, allegations leveled by the petitioner were found to be false. Moreover, it was also found that the case bearing FIR No.54, dated 25.04.2010, under Section 307 read with Section 34 IPC and 27 of Arms Act, 1959 Police Station Sadar, Moga was registered against the petitioner on the basis of statement of respondent No.4-Rajinder Singh and in counterblast with an intention to pressurize the private respondents, petitioner had got registered the present case, whereas no such occurrence, as alleged by the petitioner, ever took place.

6. I have heard learned counsel for the parties and perused the case file.

7. Order passed by learned JMIC, *inter alia*, assailed herein is premised on the following reasoning :-

“xxx xxx xxx

13) Furthermore, it has come out of the complainant evidence that there was prior litigation between him and the accused party and they are relatives. Complainant’s wife has simply testified that a criminal case was registered against the complainant and her son, which fact clearly shows prior enmity between the parties and the proof of previous enmity is a double edged weapon sought which can go in either direction basing upon the facts and evidence placed before the Court. In the present case in the light of testimony of the witnesses and above made discussion no prima facie case is found against all the accused. The complainant was bound to

at least prima-facie satisfy court of any of the vague offences alleged by him.

14) In view of the aforesaid discussion, I do not find it to a fit case to summon accused for offence under Sections 448, 380 read with Section 34 of Indian Penal Code. Therefore, the present complaint is hereby dismissed. File be consigned to Judicial Record Room."

7.1 The learned Revisional Court dismissed the revision observing as below in its order :-

"12. Cancellation report was presented in the Court, which was returned to police for further investigation. On 28.01.2014, cancellation report was again presented in the Court. Revisionist filed protest petition against cancellation report. In that protest petition, cancellation report was treated as complaint and evidence was recorded in that case. Revisionist appeared in the witness box as CW-3 and he has also examined his wife Gurcharan Kaur as CW-1 and Balvir Singh as CW-2.

13. Perusal of testimony of revisionist in the Court shows that there is no allegation regarding theft of articles. Further perusal of testimony of revisionist witnesses reveals that it has not been mentioned how the articles were stolen by the respondents and other persons. Allegations of the revisionist are vague and unsubstantive. Perusal of case file shows that there was prior litigation between revisionist and respondents. As respondent No.1 is sister-in-law & respondent No.2 is nephew of revisionist, and there was property dispute between the parties, which shows that relations between them were not cordial. After lodging the FIR, inquiry was conducted by the police and police found that no such occurrence has taken place. After submission of cancellation report, the same was returned by the Court for further investigation. Again police reported that no case is made out against the respondents. Perusal of case file shows that FIR No.54 dated 25.04.2010 under Sections 307, 34 IPC and 27 of Arms Act was lodged against present revisionist at Police Station Sadar Moga. During inquiry, police has reported that revisionist Surinder Singh has alleged that he has house along with the land of his brother Atma Singh, but the land, which has been purchased by revisionist does not abut to the house of Atma Singh. In the partition between the brothers, ancestral property came to the share of Atma Singh. In the partition between brothers, revisionist did not get 6 marlas of land. The land which has been purchased by the revisionist is at the distance of ten houses from the house of Atma Singh. Police has reported that revisionist has no house in 'Lal Lakir' in Village Daroli Bhai and in order to put pressure upon the respondents in FIR No.54 dated 25.04.2010 under section 307 read with section 34 IPC and 27 of Arms Act, present occurrence have been alleged. This Court is of the view that learned trial court has rightly held that there is no ground to proceed against the accused persons."

8. Findings, as above, recorded by both the Courts below appear to be based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

9. It borne out from the evidence that the complainant and the accused have a history of prior litigation, indicating a pre-existing conflict between them. This history of litigation suggests a prior enmity or animosity between them. The complainant's wife has

testified that a criminal case was previously registered against the complainant and her son. This fact serves as evidence of the existing enmity between the complainant and the accused party. It has rightly been observed by the learned court below that proof of previous enmity is a "double-edged weapon." Existence of prior enmity can have implications on the facts and evidence presented before the court. Complainant ought to have presented sufficient evidence to *prima facie* establish the vague offenses alleged in the complaint. For conviction evidence has to be strong enough to indicate the accused parties' potential guilt.

10. Overall, both learned courts below validly dismissed the complaint on fair and valid considerations i.e. prior enmity, lack of *prima facie* evidenceto establish a valid case against the accused, and lack of ingredients of the offenses alleged under the Indian Penal Code.

11. As an upshot, no grounds for interference are made out. Instant petition is thus dismissed.

12. Pending application, if any shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.07.2023

Sanjeev

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