

CRM-M-48253-2022 (O&M)
CRM-M-59238-2022 (O&M)

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

202

CRM-M-48253-2022 (O&M)
Date of decision: 24.08.2023

Joginder Singh And Others

....Petitioners

Versus

State of Punjab And Another

...Respondents

CRM-M-59238-2022 (O&M)

Manveer Singh

....Petitioner

Versus

State of Punjab And Another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Navjot Singh, Advocate for the petitioners.

Mr. Jaspal Singh Guru, AAG Punjab.

RAJBIR SEHRAWAT. J. (Oral)

1. By this common order, the above-mentioned two petitions shall be decided, as they arise out of the same FIR.
2. The present petitions have been filed under Section 482 of the Code of Criminal Procedure for quashing of FIR No.55 dated 06.07.2020, registered under Sections 447, 511 and 34 of the Indian Penal Code, 1860 (for short 'IPC') at Police Station Sadar Raikot, District Ludhiana Rural, along with all consequential proceedings arising therefrom.
3. In compliance of order dated 04.05.2023, learned State counsel has filed reply by way of affidavit of Rachhpal Singh, PPS, DSP, Raikot, District Ludhiana (Rural) in both cases. The same are taken on record.
4. The allegations, in essence, against the petitioners are that petitioner-

CRM-M-48253-2022 (O&M)
CRM-M-59238-2022 (O&M)

2

Joginder Singh and complainant-Major Singh along with their third brother, were co-sharers in the land. However, about 40 years back, the land was partitioned by them by an oral family settlement. At the time of the said partition, a passage was left so that the complainant and the third brother can approach their land. The said passage was being used as such for a long time. However, on 12.06.2020, the petitioners dismantled the passage and encroached upon the land of passage, thereby, leaving the complainant and other brother without any passage to their holding. Upon these allegations, the FIR in question was got registered by the complainant. The Police investigated the matter and have presented the challan. Thereafter, the Trial Court has even framed charges against the petitioners. However, the petitioners have filed the present petitions challenging the FIR and consequent proceedings.

5. Arguing the case, learned counsel for the petitioners has submitted that since the land has not been legally partitioned, therefore, the petitioners are the co-sharers of the land along with their brothers and they are to be deemed to be in joint possession of each and every parcel of the land. Since, the petitioners are co-sharer, therefore, no FIR could have been got registered by the complainant for entering into the possession of land of the alleged passage. Counsel has relied upon the judgment rendered by this Court in case of ***Dilbag Singh Vs. State of Punjab and another*** passed in CRM-M-34854-2011 decided on 13.03.2013.

6. Learned counsel has further submitted that to constitute the offence under Section 447 IPC, the disputed land should be in exclusive possession and ownership of the complainant. Since these facts are not present in this case, hence, there is no basis for the complaint as such.

7. Learned counsel for the State has submitted that during the investigation, the Police have found that the passage has been in existence since

last 40 years. There has been an oral family partition in which the co-sharers had already availed their respective shares while leaving a passage in question for the use of complainant and the other brother. Accordingly, all the three brothers were in exclusive possession of their respective shares for the last 40 years. Learned counsel for the State has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of *H. Vasanthi Vs. A. Santha (Dead) through LRs*, Civil Appeal No.7374 of 2008 decided on 16.08.2023, to buttress his argument that even oral partition is a valid partition to confer exclusive rights on the erstwhile co-sharers.

8. Having heard the learned counsel for the parties, this Court finds that the petitioners themselves have said that they were co-sharers in the land in question. The petitioners have not even disputed that they are also cultivating the land of their share exclusively. Therefore, the assertion of the complainant that oral partition had taken place appears to be probable. In any case, even if the assertion of the petitioners is to be taken into consideration, at the best, it would be a disputed question of fact. However, even disputed questions of facts cannot be adjudicated upon and or even entertained in a quashing petition filed under Section 482 Cr.P.C. for the purpose of termination of the proceedings of the FIR.

9. Learned counsel has raised a solitary argument that being a co-sharer, petitioners are entitled to possess each and every inch of land in the joint ownership of all the co-sharers, however, this hyper-technical argument being taken by the petitioners itself reflect their intention, because despite claiming the exclusive possession of some portion of land, which they claim to be exclusively cultivating, they are trying to assert their ownership qua the land of the other co-sharers as well. Otherwise also, it is established law that 'once a passage always a passage'. Therefore, by any means, the petitioners had no right to encroach upon

CRM-M-48253-2022 (O&M)
CRM-M-59238-2022 (O&M)

the land of passage. If they had any claim, they were free to avail legal remedies and not to take the law into their hands. In view of the factual gamut of the case, in which even the separate cultivation right of the petitioners is not denied by them, the judgment relied upon by the petitioners is of no assistance to their case. On the contrary, the reliance of the counsel for the State on the judgment rendered in the case of *H. Vasanthi (supra)* is found to be well placed.

11. Another aspect which deserves to be noticed here is that the police have already filed the challan against the petitioners and even charges stand framed by the Trial Court. Therefore, by any means, it cannot be said that the ingredients of the offence are not disclosed or that there does not exist any *prima facie* case against the petitioners.

12. In view of the above, this Court does not find any merit in the present petitions and the same are dismissed.

(RAJBIR SEHRAWAT)
JUDGE

24.08.2023
S.Sharma(syr)

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