

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

129

2023:PHHC:130971

CRM-M-50702-2023

Date of decision: October 9th, 2023

Dharam Pal Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Ritesh Aggarwal, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is seeking quashing of order dated 04.09.2023 passed by the learned Additional Sessions Judge, Kurukshetra, in CRR No.10 of 2022 titled as 'Dharampal Versus State of Haryana' and order dated 03.01.2022 passed by the learned CJM, Kurukshetra.

2. Learned counsel for the petitioner, *inter alia*, contends that totally false allegations have been levelled against him in the FIR in question for having committed the offences of criminal trespass, mischief, house trespass and criminal intimidation. Learned counsel contends that there was a history of animosity between the petitioner and the complainant on account of their divergent political affiliations, which in fact was one of the prime reasons of a fabricated version having been brought forth against him. Furthermore, the complainant and his wife who own a plot i.e. Plot No.28 in close vicinity to the house of the petitioner, had constructed two rooms and an open air toilet over the main sewerage line, where as many as 25 migrant labourers were residing. Since migrant labourers were frequently using the open air toilet, it had led to a nuisance in the area; the petitioner had raised

objections qua the same with the complainant. However, instead of paying heed to the requests of the petitioner and removing the nuisance, the complainant in connivance with some influential persons, started illegally raising the height of a common wall between their plots, against the approved zoning plan. The petitioner thus opposed the said illegal construction, however, it fell on deaf ears and instead, the present case was planted against the petitioner. It has further been submitted that even otherwise, a perusal of the allegations levelled in the FIR, do not even remotely attract the mischief of the offences i.e. Sections 427, 447, 452 and 506 of the IPC, which the petitioner has been charged with. A prayer has, therefore, been made that since it is evidently a case of false implication, the impugned order deserves to be quashed.

3. I have heard learned counsel for the petitioner and perused the relevant material on record.

4. Before proceeding further, it needs to be reiterated that any interference with an order, vide which charges have been framed, should be sparingly done. Quashing of charges under Section 482 Cr.P.C. is an exception rather than a rule. The primary objective of framing charges is that the accused should understand precisely what he/she is being tried for and the essential facts/allegations, he/she would need to address during the trial. At the time of framing of charges, the role of the Court is just restricted to the material and documents, which have been placed on record by the investigating agency in its final report under Section 173 Cr.P.C. This examination serves the sole purpose of determining whether there is a *prima facie* case made out against the accused, based on the ingredients of the alleged offences. In other words, the Court assesses as to whether there is enough evidence

to proceed with a trial. The veracity or truthfulness of the material and evidence presented by the investigating agency is not to be considered at the stage of framing of charges. The evaluation of the evidence and other material which is part of the challan takes place only during trial, when both the parties lead their respective evidence, and the same is then tested at the touchstone of cross-examination.

5. Before proceeding further, it would be apposite to reproduce the allegations levelled in the FIR, which has been annexed as Annexure P-1.

“Subject: Legal proceeding in against D.P. Singh resident no. 227, Sector 7, Urban Estate, Kurukshetra. Respected sir, the applicant prays as under: 1. That the applicant Subhash Chander Jagga son of Arjun Dass Jagga, House no. 241, sector 7, Urban Estate, Kurukshetra and owner of House no. 228/sector 7, Urban Estate, Kurukshetra. 2. That the applicants house no. 228 Sector 7, UE, Kurukshetra on east side of the house of accused, there is a common wall. On 22.06.2020 the accused has demolished the common wall on the eastern side of my house no. 228 where I have built a bathroom and the accused had willfully and intentionally demolished the common wall regarding which a complaint was also filed on 22.06.2020 in the Police Post. Then investigating officer inspected the site. In which the accused himself admitted that he had demolished from his side as it was illegally constructed. Due to which the applicant suffered huge loss as the common wall was valid and constructed as per site plan which was approved by the HUDA officials. Due to the act of the accused the applicant had to suffer mental and financial loss. That the abovementioned accused on 30.7.2020 had again demolished a part of bathroom and room on the eastern side and said that police cannot harm me as I am retired HCS officer and threatened that if anybody

reported the incident to the police authorities he will be killed. I have shelter from police and the administration that why no action has been taken against me till date. Therefore, considering abovementioned facts legal action be taken against the abovementioned accused.”

A perusal of the FIR leaves no manner of doubt that *prima facie*, a case inviting the mischief of each of the offences i.e. Sections 427, 447, 452 and 506 of the IPC is clearly made out against the petitioner, for the reasons to follow.

6. Section 425 of the IPC defines mischief as follows:-

*“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.
Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.
Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”*

7. Thus, what flows from the above definition of mischief is that it would include all such acts, whereby intentionally some harm is caused to a person's property, or knowingly some person engages in actions that are likely to result in harm, which could involve damage or destruction of property including making harmful altercations to it, thus, reducing the value or usefulness of the property in question. In essence, mischief thus, involves intentional or reckless harm or damage to another person's property.

8. As per allegations levelled, accused demolished the common wall on one side of the house of the complainant, where he had constructed a bathroom qua which a complaint was also made to the police. The petitioner-accused has not denied the demolition of the wall. Instead, it is his case that it had been illegally constructed. *Prima facie*, on account of the demolition of the wall, the complainant did suffer financial and monetary losses. As per allegations levelled, on 03.07.2020, the petitioner yet again demolished a part of the bathroom and a room belonging to the complainant, which had been constructed by the complainant on his own plot and still further, also extended threats of dire consequences to the complainant party. Hence, in the wake of the allegations levelled, the contention of the learned counsel that the necessary ingredients to attract the mischief of the offences, for which the petitioner has been charged are absent, is totally bereft of any merit. Learned counsel for the petitioner no doubt vehemently argued that false and fabricated allegations had been levelled against the petitioner on account of some previous animosity between the parties, however, this Court cannot delve into the veracity or otherwise of the allegations levelled as it would be a matter to be appreciated during trial.

9. As a sequel to the above, this Court does not find any merit in the instant petition and the same is, therefore, dismissed.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

October 9th, 2023

Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes