

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

201

CRM M-48407 of 2019

Date of Decision: 20.09.2023

Varinder Singh and others

...Petitioners

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. G.K. Mann, Sr. Advocate with
Ms. Komal Balain, Advocate
for the petitioners.

Mr. M.S. Joshi, Addl. A.G., Punjab.

Mr. Jasbir Singh Mohri, Advocate, for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C., with a prayer to quash the FIR No. 0133 dated 28.06.2019 under Sections 447, 511, 380 and 427 of IPC, registered at Police Station Samrala, Police District Khanna and all subsequent proceedings arising therefrom.

2. The FIR in the present case has been got registered by Sukhwinder Singh @ Dimpy son of late Gurdev Singh son of Kehar Singh resident of Lalouri Kalan, Tehsil Samrala. The FIR has been reproduced as under:-

*“Statement of Sukhwinder Singh alias Dimpy son of Late
Gurdev Singh son of Kehar Singh resident of Lalouri
Kalan, Tehsil Samrala District Ludhiana, now at Quarter*

No. 254 Commando Complex Bahadurgarh District (Patiala), aged about 47 years, Mobile No. 88475-88190. Stated that I am resident of above mentioned address and posting at Second Commando Police Bahadurgarh. My father Gurdev Singh died about 35 years ago and at that time I was young, my mother Daljit Kaur performed second marriage and started living at Patiala. My father Gurdev Singh was having residential house about 3½ biswa and out of this, the residential area came to my share. This house has two rooms, one kitchen, courtyard and washroom. We had constructed this in our area and we have also a water hand pump. Earlier, the courtyard was joint with my uncle Mohan Singh son of Kehar Singh and his sons Varinder Singh and Gurinder Singh. In this house, the electric meter was on my father's name. With the consent of my uncle and his son Varinder Singh, we constructed wall in our residential area on 17.03.2019. On 27.03.2019, when we went to stay in the house, Varinder Singh, Gurinder Singh sons of Mohan Singh and Mohan Singh son of Kehar Singh demolished the wall and stolen the bricks and caused a loss to us, and they had broken the iron box and stolen the clothes, domestic articles, Gas Cylinder Indane and they had also uprooted hand pump and they had tried to occupy our area. I have come to inform you along with my mother Daljit Kaur and wife Jagdish Kaur. I have recorded my statement, action be taken.

Sd/-Sukhwinder Singh, witness Sd/- Daljit Kaur, Kaur”.

3. Learned senior counsel for the petitioners contends that Mohan Singh, petitioner No. 3 is the uncle of respondent No. 2/complainant, whereas, the petitioners No. 1 and 2 are sons of

petitioner No. 3. She further contends that Gurdev Singh was real brother of petitioner No. 3 and uncle of petitioners No. 1 and 2, who had died about 40 years ago. After the death of Gurdev Singh, his wife, Daljit Kaur left the house and performed second marriage with Harjit Singh. After 40 years, the respondent No. 2 is claiming himself to be the son of Gurdev Singh and had got the present FIR registered by alleging that the petitioners were trying to dispossess the respondent No.2/complainant from the property, which was joint earlier and had demolished a wall and stolen the bricks etc. They had also stolen the clothes, house hold articles, gas cylinder etc., Learned senior counsel further submits that in fact the respondent No.2 is serving in Punjab Police and is trying to dispossess the petitioners from their ancestral house by misusing his connections with the local police. She further contends that the petitioners had filed a civil suit, in which, the respondent No. 2 had also filed a caveat application (Annexure P-2). However, vide order dated 13.08.2019 (Annexure P-4), the Court of Additional Civil Judge (Senior Division), Samrala, had restrained the respondent No. 2 from interfering in the peaceful possession of the petitioners in the house mentioned in the complaint. She further contends that in fact respondent No. 2 had also admitted that he had never used to come to the village and a civil suit is already pending between the parties to determine their respective rights. Still further, the father's name of respondent No.2/complainant is Harjit Singh and he was never born from the lions of Gurdev Singh. She

further contends that a civil litigation has been given the colour of criminal offence and the FIR is totally an abuse of the process of the Court.

4. On the other hand, learned State counsel submits that from the written statement of respondent No. 2, offence under Sections 447, 511, 380 and 427 IPC was made out and the FIR was ordered to be registered against the petitioners. Even, the gas cylinder, bricks, electricity meter of Gurdev Singh were recovered from the petitioners and the photographs were also part of the report under Section 173 Cr.P.C. It was also stated that the joint wall between the parties had been demolished by the petitioners and they want to grab the share of respondent No.2, which he had inherited from his father Gurdev Singh. However, the pendency of the civil suit between the parties was not denied.

5. Learned counsel appearing on behalf of respondent No. 2 submits that the respondent No. 2 was son of Gurdev Singh and he was having right in the property of his father Gurdev Singh. Even, there was a family settlement dated 26.01.1994 and as per that, the possession of property of Gurdev Singh was given to the respondent No. 2. He further contends that the wall in question was constructed on 17.03.2019 with the consent of Mohan Singh, petitioner No. 3 and the said wall between the properties of both the parties was demolished illegally. Even, the FIR was registered by police after about 03 months of the occurrence. Even, the stay order in favour of

the petitioners had already been vacated by the Civil Court. Thus, the petition was liable to be dismissed.

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

7. The Hon'ble Supreme Court discussed the materials, which the High Court can assess to quash a FIR in ***State of Andhra Pradesh Vs. Golconda Linga Swamy, (2004) 6 SCC 522*** and held as follows:-

“5....Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239*, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction:

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an Instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....”

(Emphasis supplied)

8. Still further in the matter of ***State of Haryana Vs. Bhajan Lal, AIR 1992 SC 604***, the High Court had laid down the parameters for quashing of the FIR and held as follows:-

"(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 mala fide 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. In the present case, it is apparent that the parties are closely related. In fact, the petitioner No. 3 is the real uncle of respondent No. 2 and petitioners No. 1 and 2 are sons of petitioner No. 3. Even, a civil litigation with regard to the property in question is already pending before the Civil Court between the parties. Even, it has been alleged that the joint wall between the properties of the petitioners and respondent No. 2 had been demolished by the petitioner and certain goods were stolen from there. However, in the present case, the respondent No. 2 is employed with Punjab Police and the allegations have been levelled by the petitioners that the respondent No. 2 had got the FIR registered after about 03 months of the alleged occurrence by misusing his connection in Punjab Police. Further, it is admitted that Daljit Kaur, mother of respondent No. 2 had left the home after the death of her first husband Gurdev Singh

several years ago and married Harjit Singh. Thus, the possibility of false implication of the petitioners could not be ruled out and apparently, the case appears to be of civil nature between the parties.

10. No doubt, in several judgments, the Hon'ble Supreme Court has held that powers under Section 482 Cr.P.C., have to be exercised sparingly and for the purpose of prevention of abuse of process of the Court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends on the nature of the allegations levelled by the complainant in the said FIR and the High Court has to look for the essential ingredients of the offences in the FIR. A complaint disclosing civil transaction may also have a criminal texture. However, the High Court has to judge whether the dispute is essentially of civil nature or a case of civil nature has been given a cloak of criminal offence. In such a situation, if civil remedy is available between the parties and in fact, found to have been adopted, as has happened in the present case, the High Court should quash the criminal prosecution to prevent the abuse of the process of the Court. In the present case also, it is apparent that respondent No.2, who is employed in Punjab Police got the FIR registered against the petitioners, who are his own family members.

11. In view of the above, the present petition is allowed. The FIR No. 0133 dated 28.06.2019 under Sections 447, 511, 380 and 427 of IPC, registered at Police Station Samrala, Police District Khanna

and all proceedings emanating therefrom are hereby ordered to be
quashed qua the petitioners.

20.09.2023

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No