

**110IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-60173-2022 (O&M)
Date of Decision: 19.04.2023

BABITA DEVI

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mani Ram Verma, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

CRM-8495-2023

This is an application for placing on record document
i.e. contempt petition (Annexure P-4) pursuant to order dated 22.12.2022.

Criminal Misc. Application is allowed, as prayed for and
Annexure P-4 is taken on record, subject to all just exceptions.

CRM-M-60173-2022

Petitioner has filed the present petition under Section 482 of
the Code of Criminal Procedure, seeking direction to respondents No.2 and
3 for registering FIR against respondents No.4 to 12, as per complaint dated
27.10.2022 (Annexure P-3).

2. It is stated by the petitioner that she along with one
Satender Kumar, had filed a Civil Suit for declaration and permanent
injunction against private respondents along with an application under
Order 39 Rules 1 and 2 of the CPC, for restraining the said respondents
from alienating the property in favour of any person or changing the nature
of land or interfering in their peaceful possession etc. It is submitted that

the trial Court passed an order dated 25.03.2011 (Annexure P-1) on the

application under Order 39 Rules 1 and 2 read with Section 151 CPC; whereby, the defendants in the suit were restrained from interfering in the possession of the plaintiffs in the suit over the suit property by mortgaging, selling in favour of any person or changing the nature of the suit land on the basis of wrong revenue entries in his favour till the decision of the case.

3. It is the categorical stand of the petitioner that the said suit was dismissed in default on 15.10.2015 and an application for restoration of the same was also rejected on 02.09.2019. However, an appeal against the same was allowed by the District Judge on 03.08.2022, restoring the case. It is stated that during the proceedings of restoration of the case, the defendants in the suit namely, Kamlesh transferred the land in favour of Kanta and Tejpal vide registered Sale Deed No.5377 dated 18.11.2015 and they further transferred the same to Urmila and Anil vide registered Sale Deed No.1153 dated 16.06.2021. It is alleged that the said transfers were in violation of order dated 25.03.2011 and thereafter, the above-said persons started interfering in the peaceful possession of the petitioner.

4. Learned counsel for the petitioner submits that the private respondents are head strong persons and they are harassing the petitioner in collusion with the police authorities and have also got one writing dated 19.10.2022, forcibly executed from Surender (Annexure P-2). However, on the basis of said writing, the respondents want to cultivate the land, in dispute forcibly. Accordingly, the petitioner is stated to have filed a complaint dated 27.10.2022 (Annexure P-3) to the Superintendent of Police, Rewari, against the respondents including ASI Parvinder, Police Station Sadar Rewari; however, no action has been taken thereupon till date. Accordingly, the present petition has been filed before this Court.

5. I have given my thoughtful consideration to the matter and as per the own pleaded case of the petitioner, there was a Civil Suit filed by her, wherein initially, an injunction was granted on 25.03.2011; however, concededly the said suit was dismissed in default and even the restoration application is also stated to have been rejected on 02.09.2019. However, the appeal against the same was allowed only on 03.08.2022. It is the stand of the petitioner that while the proceedings for restoration of the suit were pending, the private respondents have allegedly sold the property and on the basis of said sales, it is alleged that the private respondents are interfering in the possession of the petitioner. The petitioner claims that a writing was got forcibly executed from Surender son of Satender (Annexure P-2) and on that basis, the respondents are adamant to cultivate the land, in question forcibly, for which, complaint dated 27.10.2022 (Annexure P-3) stated to have been submitted to the Superintendent of Police, Rewari. The writing (Annexure P-2) reads as under :-

“ I, Surender S/o Satender am R/o BodiyaKamalpur. That on 17.10.2022 on the asking of my family members I got the disputed field adjoining to boundary of Village BalawasJamapur cultivated from driver of tractor Billu S/o Jodiya P.S. Kotkashim (Rajasthan). I got cultivation by misunderstanding. The case of this disputed land is pending in the Civil Court. After the decision of the court in our favour we will take possession through legal proceeding. We will not make any obstructions for cultivating the disputed field by complainant Gajraj. If, we want to restrain Gajraj from cultivation we will do that by obtaining stay. We will not raise any dispute regarding the disputed field.”

6. A perusal of the said writing dated 19.10.2022 (Annexure P-2) would *prima facie* indicate that the dispute is pending before the Civil

Court. This Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is not to embark upon an inquiry to determine as to who is in possession of the land. Insofar as the registration of FIR in terms of complaint dated 27.10.2022 (Annexure P-3) is concerned, it may be noticed that the proper remedies in such a case which are to be adopted are set out in Section 156(3) Cr.P.C. or Section 190 read with Section 200 Cr.P.C.

7. Hon'ble Apex Court in *Aleque Padamsee and others v. Union of India and others 2007(6) SCC 171*, observed that the correct position in law is that the police officials are to register a FIR whenever the facts brought to the notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are set out in Section 190 read with Section 200 Cr.P.C. Therefore, if a person is aggrieved by the inaction of police officials in not registering a FIR, the modalities contained in Section 190 read with Section 200 Cr.P.C are to be adopted and followed.

8. It was further observed by Hon'ble Apex Court in *Sakiri Vasu vs State of UP and others 2008(1) RCR (Criminal) 392*, that if a person has a grievance that the Police Station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not lead to any satisfactory result in the sense that either the FIR is not registered or even after registering it no proper investigation is held, it is open to the aggrieved person to file such application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) Cr.P.C. is filed before the Magistrate, the Magistrate can direct the FIR to be registered and can also direct proper investigation to be made in a case where, according to the aggrieved person, no proper

investigation was made. However, a petition under Section 482 Cr.P.C. for directing the registration of a FIR is to be done only in some rare and some exceptional cases.

9. In view of the above, this Court is of the considered view that the petitioner may avail her remedies in accordance with law and no interference of this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C. is warranted.

10. Accordingly, the instant petition is dismissed.

April 19, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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