

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M 1498 of 2023

Date of Decision: 12.01.2023

Jagjit Singh and Ors.

.....*Petitioners*

Versus

State of Punjab and Anr.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Umesh Kumar Kanwar, Advocate for the petitioners.

GURBIR SINGH, J (ORAL)

Petitioners have filed the present petition *inter alia* with a prayer for quashing of FIR No.0147 dated 27.06.2018 under Section 447, 511, 34 IPC registered at P.S. Dugri District Ludhiana (Annexure P-1) and all subsequent proceedings arising therefrom on the basis of compromise.

Learned counsel for the petitioners contends that respondent No.2 has lodged the FIR (Annexure P-1) with the allegations that on 27.06.2018, petitioners along with one Bhura tried to interfere into the possession of the complainant whereas petitioner No.2 has been in possession of suit property since 1986 from date of purchase. A rent agreement was executed between petitioner No.1 and petitioner No.2 in the year 2017. Attar Singh i.e. father of petitioner No.2 and respondent No.2 was having six children. He expired intestate on 25.01.2014 and after his death, property was inherited by his successors as per their entitlement. But later on, some family dispute arose between the legal heirs of Attar Singh and civil litigation is pending between the parties before the Competent

Court of jurisdiction in Ludhiana as well as New Delhi. The petitioner No.2

is owner in possession of the suit property No.BXX-5111806 situated at Mata Nagar, Ludhiana which was purchased by petitioner No.2 in the year 1986 to the extent of 253 sq.yds i.e.50% of the total land measuring 506 sq.yds. and possession of the entire property is with petitioner No.2. Since then petitioner No.2 has not given any power of attorney to sell the above said property to anyone. As alleged in the FIR, on the basis of general power of attorney dated 27.09.1991, executed in favour of Attar Singh i.e. father of petitioner No.2, he has transferred the property by way of sale deed in favour of his younger son Jasvir Singh and on the basis of said sale deed complainant alleged that he and his brother were in the possession of the said property but neither complainant nor Jasvir Singh came into the physical possession of the said property at any point of time. Rent agreement was executed between petitioner No.1 and petitioner No.2 on 22.08.2017. Later on, a dispute arose between them. Petitioner No.2 also threatened petitioner No.1 to eject him forcibly from the suit property, therefore, petitioner No.1 filed a civil suit for permanent injunction (Annexure Ex.P2). Learned trial Court vide order dated 14.06.2018 (Annexure P-3) directed the parties to maintain status quo with regard to possession over the suit property. He further submits that petitioner No.2 also filed a civil suit before Hon'ble Delhi High Court seeking 1/5 share by way of partition in the entire property of the deceased Attar Singh before the Tis Hazari Court, New Delhi. On an application having been moved by respondents under 7 Rule 11, the suit was returned with direction to file the suit before the competent court of jurisdiction. The suit was accordingly filed in the Hon'ble Delhi High Court and parties were directed to maintain the status quo (Annexure P-5). In order to put pressure upon the petitioners,

complainant/respondent No.2 had filed false and frivolous FIR. Petitioner No.1 is in possession of the suit property as tenant and petitioners No. 2 and 3 are in possession of property as owners since the date of purchase. Investigating Agency without properly investigating the matter has submitted the challan under Section 173 Cr.P.C before the competent court of jurisdiction at Ludhiana. It is further argued that case of the petitioner falls under the guidelines given by the Hon'ble Supreme Court of India in case titled as 'State of Haryana Vs. Chaudhary Bhajan Lal' 1991(1) RCR (Criminal) page 383.

No prima facie case is made against the petitioners, so the FIR in question deserves to be quashed as the matter is of civil in nature. He also relies upon the judgments of Hon'ble Supreme Court in case 'Joseph Salvaraj A. Vs. State of Gujarat and Ors' 2011(@) R.C.R. (Criminal) 632 and 'Arwinder Singh and Ors Vs. State of Punjab, 2014(8) RCR(Criminal)1302', and submitted that FIR be quashed.

Heard.

Petitioner No.1 filed a civil suit for permanent injunction restraining the petitioner No.2 from interfering in his peaceful possession over the tenanted premises (Annexure P-2). Vide order dated 14.06.2018 (Annexure P-3), learned Additional Civil Judge (Sr. Divn.), Ludhiana, directed both the parties to maintain the status quo.

On asking, learned counsel for the petitioners stated that he was not aware if application for temporary injunction was finally decided or not. In fact, application for temporary injunction filed under Order 39 Rule 1 and 2 CPC was required to be decided within 30 days. Civil and criminal proceedings can go simultaneously. In the 'Chaudhary Bhajan Lal's' case

(supra), the relevant extracts of the same reads as under:-

'107, In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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 F.I.R. 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 F.1.R. 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 F.L.R. 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.'*

The case of the petitioner does not fall in any of the categories mentioned above. In Joseph Salvaraj's case (supra), criminal proceedings were initiated against the owners of Siti cables for allowing telecast of Channel 'God T.V.' in certain areas of Gurjarat and the accused agreed to pay Rs.10 lakhs for the purpose, but failed to pay the amount despite the telecast of his channel 'God T.V.'. The FIR was quashed as the dispute was of civil nature.

In Arwinder Singh's case (supra), it is held that it is mandatory for prosecution to establish that complainant was in actual possession of the disputed property at the time of occurrence. Prosecution failed to establish the same and the accused was acquitted, whereas in the case in hand the complainant is required to lead evidence and accused definitely be given opportunity to lead his evidence and in the trial only it can be established whether the complainant is in possession of the property or not.

The above mentioned authorities are not attracted to the facts of the present case.

The challan has already presented. No manifest injustice is done to the petitioner. The inherent powers cannot be exercised to stifle the legitimate prosecution. There is no ground to quash the FIR. Petition is dismissed. However, nothing observed hereinabove, shall not be construed to be an opinion on the merits of the case.

January 12, 2023
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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No