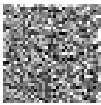


2024:PHHC:127233



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

201

CRM-M-7920-2024
Date of Decision: 11.06.2024

SHAILESH KUMAR MISHRA AND OTHERS
.....PETITIONERS

VERSUS

THE STATE OF HARYANA AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Lalit Sharma, Advocate and
Mr. Yoginder Singh Rana, Advocate
for the petitioners.

Mr. Gaurav Bansal, DAG, Haryana.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of case FIR No. 268 dated 28.07.2022 registered under sections 323,341,506,34 IPC registered at Police Station Sector 50, Gurugram, Haryana (Annexure P-1) and all other subsequent proceedings arising therefrom.
2. Counsel for the petitioner contends at the very outset that the present dispute is of a civil nature which has been completely given a criminal colour by twisting the facts wherein the petitioners and respondent no.2 are neighbors living in the same building which comprises of three separate floors where the residents share common areas namely staircase, terrace, water tank

etc and as per the conveyance deed dated 1.02.2016 (Annexure P-3), petitioners residing on ground floor have right to use the terrace above the second floor for periodic inspection and other repairs. Further, respondent no.2 in violation of the deed has put a lock on the door leading to terrace so as to prevent other owners including petitioners to access the terrace

3. He further contends that owing to such an act of the respondent no.2, petitioner no.2 was denied the access to get repair her dish antenna and also misbehaved with petitioner no.4 and the same was reported to the police dated 13.06.2022 (Annexure P-5) but no action was taken to it.

4. Counsel for the petitioner vehemently contends that indeed a false and concocted complaint was registered by respondent no.2 against the petitioners alleging physical assault, abusing and giving life threats whereas Petitioners no. 1 to 3 were not even present at the time of occurrence and thereafter in investigation by Women Police Station, no case was made out. In addition, the neighbors wrote a common letter stating that no such incident as alleged took place and the petitioners had merely asked the respondent no.2 to open the lock of the door to terrace.

5. He further contends that despite having no case made out from the inquiry conducted, an FIR no. 268 dated 28.97.2022 u/s 323, 341, 506, 34 IPC came to be registered at Police Station Sector 50, Gurugram on same set of allegations with no change in circumstances and even the Final report (Annexure P-2) does not disclose any offence to have taken place.

6. On the other hand, learned state counsel while relying upon a reply filed by Mr. Jitender, HPS, Assistant Commissioner of Police East, Gurugram on behalf of the State of Haryana contends that all the contentions raised in the instant petition are disputed question of facts which cannot be

summarily tried by the Hon'ble court and has to be looked into by the Trial Court.

7. Heard learned counsel for the respective parties at length.

8. From the meticulous perusal of the record in hand, it is worthwhile to mention that nowhere in the conveyance it has been mentioned that the owner of the second floor has sole right to access the terrace, rather it is an area to be used commonly by all the owners of the said building and moreover, the statements of the witnesses itself makes it clear that no physical assault took place with respondent no.2 meaning thereby, a criminal colour has been given to a civil dispute which is a matter to be decided by the trial court only.

9. The Apex court in "***Paramjeet Batra vs State of Uttrakhand & ors (2013) 11 SCC 673***" has held that dispute of civil nature to be considered and weighed by High Court under Section 482 Cr.P.C to be used sparingly and only for the purpose of preventing abuse of process of any court or otherwise to secure ends of justice whether a complaint discloses a criminal offence or not depend upon the nature of facts alleged whether essential ingredients of criminal offence are present or not has to be judged by the High Court.

Relevant para is reproduced herein below:-

"7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a

criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.”

10. The allegations in the instant FIR are made in omnibus or general manner therefore the court exercising extra-ordinary jurisdiction can neither undertake to conduct a mini trial nor enter into appreciation of evidence of a particular case.
11. Since the instant case involves disputed question of facts which are to be decided by the trial court therefore in the light of above stated discussion and decision of the Apex court in Paramjeet Batra(supra), the instant FIR No. 268 dated 28.07.2022 (Annexure P-1) and Final Report dated 31.10.2022 (Annexure P-2) and all subsequent proceedings arising therefrom is hereby quashed qua the petitioners.
12. Ordered accordingly.

11.06.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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