



brevity, facts are culled out from CRM-M-25310-2014.

2. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of criminal complaint No. 160-1/10/12 titled as '**Harbans Singh Vs. Gian Chauhan and others,**' dated 10.06.2010 filed under Section 148, 149, 323, 324, 325, 447, 504, 506 of the IPC (Annexure P-17) as well as the summoning order dated 19.05.2014 (Annexure P-20) passed by the learned Judicial Magistrate 1<sup>st</sup> Class, Ambala.

### **FACTUAL BACKGROUND**

3. Briefly, the facts are that the disputed land was owned by the sister of petitioner no. 1 namely Pratha, after whose death, the same was mutated in the name of her husband Colonel (Retd.) K.C. Singh, who further sold it to one Narinder Pal Kaur. Narinder Pal Kaur sold the said land to Sat Pal Singh who further sold it to complainant-respondent namely Harbans Singh vide sale deed dated 21.06.2006 for a sale consideration of Rs. 75,00,000/-. Since the sale, the complainant-respondent has been cultivating the said land (88 kanal 15 marla) as owner in possession. The petitioners were interfering in possession of Colonel K.C. Singh causing him to file a civil suit in January 2005, wherein a stay order was obtained. Subsequently, on 04.04.2010, at about 10 AM, the petitioners-accused, in connivance with each other, formed an unlawful assembly and trespassed into the land of the complainant-respondent. On instigation by the petitioners, the accused party attacked the complainant party.

### **CONTENTIONS**

4. Learned senior counsels for the petitioners *inter alia* contend that on 04.04.2010, the petitioners were informed that the respondent and his accomplices had attacked the labourers working in their orchards. On reaching

the spot, petitioner no. 1 was also attacked, as discernible from the MLRs (Annuxures P-9 to P-11). Consequently, FIR No.39 dated 04.04.2010 under Sections 323, 324, 34 of IPC was registered at Police Station Barara, District Ambala, regarding which challan was filed on 10.05.2010. The learned trial Court, after detailed discussion, has negated the defence taken by respondent-Harbans Singh and convicted him vide judgment dated 11.07.2019 (Annexure P-22).

5. It is submitted that on 18.02.2001, Pratha was murdered in her house, allegedly, by the masons employed by her husband Colonel K.C. Singh in order to grab the property she had bequeathed on to her husband vide will dated 04.04.1987, which was clearly forged and fabricated as the stamp papers were purchased on 01.08.2001. In furtherance of his greed, Colonel K.C. Singh also started interfering with the property in possession of the petitioners. The petitioners lodged DDR No. 31 dated 11.01.2005 and DDR No. 16 dated 12.01.2005 but no action was taken.

6. It is further argued that Colonel K.C. Singh, in collusion with the local police, managed to get FIR No.06 dated 12.01.2005 registered against the petitioners. The proceedings that emanated from the aforementioned FIR culminated into cancellation. However, the predecessor-in-interest of respondent No.1 i.e Colonel K.C. Singh filed a petition before this Court bearing CRM-M-925-2009, which was dismissed vide order dated 22.07.2010 (Annexure P-6).

7. Furthermore, proceedings under Section 145 Cr.P.C. were initiated and vide order dated 11.10.2010 (Annexure P-7), learned Executive Magistrate,

Ambala had held that the possession was to remain with the petitioners. In RSA-1102-2013 and connected petitions, this Court held the petitioners' side to be owners in possession of the land in question. The case has been set up by the respondent No.1 that the petitioners were the aggressor party who caused injuries on the respondent party is an abuse of process of law. The complaint (*supra*) has only been filed as a counter-blast to the FIR No. 39 out of private spite, merely to wreak vengeance on the petitioners. Reliance in this regard has been placed on the judgment passed by the Hon'ble Supreme Court in '*State of Haryana and others Vs. Ch. Bhajan Lal and others*' 1991 (1) R.C.R. (Criminal) 383.

8. *Per contra*, learned counsel for respondent No.1 submits that it is a case of version and cross-version. Respondent No.1 informed the jurisdictional police authorities about the injuries inflicted on the respondent party, by filing a written complaint and a DDR was registered. However, the local police did not take any action under the influence of the petitioners compelling respondent No.1 to institute a private complaint. The medico-legal examination of respondent No.1-Harbans Singh and three other injured witnesses was conducted on the date of incident i.e. 04.04.2010 at 11:45 PM and the ocular version was duly corroborated by CW-1 Dr. Tarun Prasad. The evidence led by the petitioner and the findings of the trial Court resulting in conviction of respondent No.1 in the year 2019 cannot be read into evidence in the present case. These disputed questions of facts can only be adjudicated by the learned trial Court on the basis of evidence adduced by the parties and these cannot be decided by this Court by exercising its power under Section 482 Cr.P.C. Learned counsel further submits that it is a settled law that version and cross-

version are to be tried together, one after the other. Reliance in this regard can be placed on 'State of M.P. v. Mishrilal(dead) and others' 2003(3) R.C.R(Criminal) 287 wherein the Hon'ble Supreme Court has laid down guidelines with respect to trial of cases of version and cross-version together.

9. It is further contended that the Hon'ble Supreme Court in *Mishrilal's case (supra)*, has upheld the guidelines issued by a two Judge bench of the Hon'ble Supreme Court in 'Nathilal v. State of U.P.', 1990 (Supp.) SCC 145 wherein the following was held:

*"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."*

10. Learned counsel further submits that grave prejudice has been caused to respondent no. 1 by deciding the FIR(*supra*) case separately. It is settled law that the evidence led in the trial for the FIR (*supra*) case cannot be read into evidence for adjudication of the present complaint (*supra*) case.

**OBSERVATIONS AND ANALYSIS**

11. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that indubitably, respondent no. 1 along with three more persons suffered injuries as recorded in the MLR prepared on the same date. The said injuries also stand proved on record by CW1- Dr. Tarun Parsad. However, this Court can neither determine the genesis of occurrence and conclude which party was the aggressor or conclusively hold whether the injuries suffered by either side were inflicted in a free fight or in exercise of right of private defence or otherwise, as disputed questions of facts are to be adjudicated only by the learned trial Court on the basis of the evidence led by the parties. This Court cannot exercise its powers under Section 482 Cr.P.C to suffocate the case of respondent party on the basis of probable defence set up by the petitioners, however immaculate it may seem.

**CONCLUSION**

12. Accordingly, without further commenting on merits of the case, lest it may prejudice either of the parties, the present petitions stand dismissed. Needless to say that the learned trial Court shall decide the present case in accordance with law and on its own merits, without being influenced by any of the observations made by this Court in the instant order.

13. However, in view of the ratio laid down by this Court in '**Suresh Kumar and another Vs. The State of Haryana and another**' 2023 (4) R.C.R (Criminal) 304, the personal appearance of all the petitioners before the learned trial Court is ordered to be exempted, subject to the following conditions:-

- i) petitioner shall be represented through their counsel;
- ii) shall not delay/stall the trial proceedings;
- iii) shall not dispute their identity as accused;

- iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel;
- v) shall appear before the trial Court as and when required; and
- vi) any other condition, which the trial Court may impose.

(HARPREET SINGH BRAR)  
JUDGE

07.03.2024  
Neha

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