

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

CRM-M-26757-2014

Reserved on: 07.02.2024

Pronounced on: 09.02.2024

2024:PHHC: 018601

RAJESH

. . . . PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - None for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

Mr. Raman Kaswan, Advocate,
for respondent Nos.3, 4, 6 & 7.

DEEPAK GUPTA, J.

By way of this petition, filed under Section 482 CrPC, petitioner prays for quashing of judgment dated 01.05.2023 passed by Id. Additional Chief Judicial Magistrate Jind, discharging the accused.

2. Perusal of the paper-book would reveal that FIR No.174 dated 28.10.2011 (Annexure P1) under Sections 447/427/506 IPC was registered at Police Station Julana, District Jind on the complaint of petitioner-Rajesh against respondents-accused alleging that accused had entered to fields of the petitioners and harvested the crop. After necessary investigation, challan was filed. However, vide impugned order dated 01.05.2013 (Annexure P7), Id. ACJM, discharged the respondents-accused.

3. Challenging the aforesaid order, it was pleaded that Id. Magistrate had wrongly discharged the respondents, without giving opportunity to the prosecution to prove allegations. However, at the time

when this case was fixed before this Court for arguments, nobody turned up for the petitioner-complainant despite last opportunity and despite making it clear on the previous date of hearing that in case arguments are not addressed, the Court would be constrained to dispose of the matter on merits.

4. In the aforesaid circumstances, counsel for the respondents have been heard and paper-book has been thoroughly perused.

5. The order (Annexure P7), passed by Id. ACJM, reads as under: -

“I have heard learned APP for State assisted by Shri Chand Ram counsel for complainant and S/Shri Daya Singh and Sandeep Beniwal, Advocates for accused.

2 *In brief facts of prosecution against accused are such that accused Fateh Singh, Krishan, Balram, Kuldeep, Mahender and Jaipal on 27.10.2011 at about 4.30 P.M., when both complainant Rajesh and Ranbir who are lessee of 90 Kanals 10 marlas land mentioned in complaint, went to their fields for seeing their crop of paddy and observed that accused mentioned above were harvesting their field with the help of 40 persons. When complainant protested, they given threat of life to complainant. At that time they had harvested five acres land. Two tractors make Sonalika-60 of blue colour were standing there. In complaint, request was made for lodging FIR against accused.*

3 *It is pertinent to mention here that same complainant also got registered FIR No. 178 dated 31.10.2011 under Sections 447, 379 of IPC against same accused. Charge was framed by learned trial court. Accused filed revision before learned Sessions Judge, Jind. Vide judgment dated 04.12.2012 learned Sessions Judge set aside the order of learned trial court whereby charge was framed against accused under Sections 379, 447 of IPC. Accordingly learned Sessions Judge discharged revisionists/accused in FIR No. 178.*

4 *It is very much necessary here to mention that there has been constant civil litigation directly or indirectly between the parties. Precisely stated that there were two ladies namely Smt. Raj Kaur and Phulpati who wrongly on the basis of wrong report alienated their share to Jagdish and Parmod Kumar beyond their share. In fact their share was only to the extent of 1/6 share in total land measuring 721 kanals 9 marlas. civil suit was filed by Fateh Singh and others against Smt. Raj Kaur and others. Learned trial court dismissed the suit*

of plaintiffs/appellants but learned First Appellate Court vide judgment and decree dated 26.9.2011 set aside judgment and decree of trial court and held that mutation no. 1826 Ex. P13 sanctioned on the basis of decree dated 24.5.1982 is illegal, null and void and subsequent sale deeds and lease deed beyond the share of Smt. Raj Kaur and Phulpati i.e. defendants no. 1 and 9 in favour of defendants no. 10 to 12 are wrong, illegal, null and void and not binding on the rights of plaintiffs.

From perusal of jamabandi of year 2008-09, Khewat No.229, Khatoni Nos. 263, 265, 267 it is evident that Fateh Singh father of accused Krishan, Balram, Kuldeep namely Anant Ram, Mahender Singh son of Attar Singh are co-sharers in disputed property. One other person namely Jaipal son of Balwan was also implicated not only in FIR No. 178 but in present FIR No. 174. The facts of FIR nos. 174 and 178 are similar and learned Sessions Judge, Jind vide judgment dated 4.12.2012 discharged all accused including Jaipal son of Balwan Singh. The facts of present case are squarely covered by case titled **Sadhu Siongh and Others vs State of Punjab and Another 2011 (3) RCR (Criminal) 263** wherein ratio was laid down by our Hon'ble High Court to the effect, "Criminal Procedure Code, 1973, Section 482 Indian Penal Code, 1860, Sections 447, 506 and 427 Criminal Trespass Quashing of FIR lodged against petitioner under Sections 447, 506 and 427 Allegations that petitioners along with 28/30 persons illegally and forcibly entered into the land which was under occupation of the complainant Therefore they occupied the land and forcibly ploughed the land Complainant failed to prove his exclusive possession Petitioners were co-sharers in the property and were already in possession of the land prior to the registration of FIR Hence, no offence is made out FIR quashed."

In my view, in present case accused have been co-sharers and they cannot be made liable for any criminal trespass over their own property, though same is joint property. In the eye of law each co-sharer has right to enjoy joint property till it is partitioned by metes and bounds. In judgment dated 26.9.2011 passed by Shri Najar Singh, the then learned Addl. District Judge, Jind in Civil Appeal No. 105/09, right of lessee from complainant was snatched because alienation was affected by Smt. Raj Kaur and Phulpati beyond their share. Jaipal has been implicated in present FIR as well as in FIR no. 178 without any rhyme and reason, while other five accused are co-sharers in the disputed property measuring 90 kanals 10 marlas. So in view of the facts discussed above and position of law laid down by our Hon'ble High Court in case titled **Sadhu Siongh and Others Vs. State of Punjab and Another (supra)** and decision of learned Sessions Judge, Jind given in revision No. 194/2012 decided on 4.12.2012, I am of the view that accused did commit no offence and they have been wrongly implicated in FIR No. 174 alike FIR no. 178. In the eye of law they

*are very much entitled for discharge. Hence they are hereby discharged. Bail bonds and surety bonds of accused are **discharged**. File be consigned to record room after due compliance.*

6. This Court does not find any illegality or perversity in the aforesaid order, which is based upon reason and the correct legal position. The respondents-accused, having been found to be co-sharers in the land in dispute, could not have been turned as a trespasser or the thieves. As such, it is held that Id. Additional Chief Judicial Magistrate Jind had rightly discharged the respondents-accused.

No Merits. Dismissed.

09.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |