



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.225

CRM-M-20608-2020 (O&M)
Decided on:09.08.2024

Sunita Sharma ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Karan Gupta, Advocate
for the petitioner.

Sh. Deepinder Singh Brar, Sr. DAG, Punjab.

Mr. Arvind Seth, Senior Panel counsel for UOI-respondent No.3.

N.S. SHEKHAWAT, J.

CRM-33228-2023

Application is allowed. Exemption sought is granted and
Annexures P-9 to P-11 are permitted to be taken on record.

Main case

1. The present petition has been filed under Section 482 Cr.P.C.
with a prayer to quash FIR No.0054 dated 18.05.2020 registered under
Section 447 IPC at Police Station Pasyana, District Patiala.
2. The FIR in the present case was registered on the basis of the
complaint submitted by Sachit Sharma, Captain Adjutant, 119 Asit
Engineering Regiment and the same has been reproduced below:-

“One application bearing No. 7631/A/DSP/SMN dated
09.03.2020 and bearing No. 10105/C-3 dated 07.03.2020 from
Sachit Sharma, Captain Adjutant for Commanding Officer, 119



Asit Engr. Regt. PIN-914119 c/o 56 APO after investigation after registering case against Sunita Sharma w/o Jaswinder Sharma r/o Village Hajimajra, P.S. Pasyana, District Patiala, received, the details of which are as under:

"3562/LAND/35/Q119 Aslt Engr Regt PIN 914119 c/o 56 APO 19 Nov 2019 SHO, Police Station Village Passiana CONSTRUCTION ACTIVITY WITHIN 10 METER OF DEFENCE ESTABLISHMENT 1. Please refer: (a) Govt. of India Ministry of Defence letter No. 11026/2/2011/D (Lands) datet. 21 OCT 2016 (b) Stn HQ Patiala letter No. 1009/Un-auth/constr/ Land dt 16 Nov 2019 2. It is intimated that Sunita Sharma W/o Jaswinder Sharma forwarded by him vide his office number 5004/5A/PSN dated 28.11.2019 to the office of Hon'ble DSP, Circle Samana, in which it was written that in reference to enclosed letter bearing No. 3562/LAND/35/Q/19 Nov. 2019, Asit Engr Regt PIN 914119 c/o 56 APO, Sh. Sachit Sharma, Captain Adjutant for Commanding Officer, it is submitted that above mentioned letter was received through post, in which Hon'ble Commanding Officer has written that Sunita Sharma w/o Jaswinder Sharma, who in violation of the Government Policy was raising construction illegally in military area and she be restrained from doing so and case be registered, in respect of investigation of which, Sh. Jaswinder Sharma after appearing presented an order of Sh. Rajinder Aggarwal, Addl. Sessions Judge, Patiala, dated 04.07.2015 which is enclosed. Apart from this, in one writ petition bearing no. CWP No. 17230-2015 by Harbhajan Singh against Union of India etc., as per orders of Hon'ble Punjab and Haryana High Court, demarcation of this area was conducted by Sh. Pritpal Singh, Field Kanungo, Patiala, in which encroachment by Harbhajan Singh to the extent of 74 sq. yards and by Sunita Sharma to the extent of 50.83 sq. yards has been written. Whereas, at the time of closure of this writ petition, Hon'ble Punjab and Haryana High Court vide its order dated 05.08.2019



by mentioning encroachment by petitioner Harbhajan singh to the extent of 74 sq. yards, dismissed the writ petition. Whereas, in similar manner Sunita Sharma w/o Jaswinder Sharma has been mentioned to be in illegal possession of 50.83 sq. yards belonging to military, as per revenue record, as such, you are requested to obtain legal opinion of D.A. Legal Sahib in reference to above mentioned letter and further directions be issued. On which, Hon'ble DSP Sahib, Samana after approving with the investigation of Chief Officer Sahib Pasyana after investigation obtained legal opinion on the complaint and forwarded to Senior Superintendent of Police, Patiala vide office letter no. 7631/A/DSP/S dated 02.12.2019 for approval and further action. On which, Hon'ble Senior Superintendent of Police, Patiala after agreeing with the investigation report of Chief Officer, P.S. Pasyana and Deputy Superintendent of Police, Circle Samana, vide his office letter no. 46978/C-3 dated 04.12.2019 wrote to Hon'ble D.A. Legal, Patiala for opinion please, on which District Attorney, Patiala after going through the complaint, vide his letter no. 535/DA/L dated 20.12.2019 wrote to Senior Superintendent of Police, Patiala, that I have carefully gone through the documents in respect of letter under reference bearing no. 46978/C-3 dated 04.12.2019 from Sachit Sharma, Captain Adjutant for Commanding Officer 119 Asit Engr. Regt. PIN-914119 c/o APO. Along with the record, copy of the judgment passed by Court of Sh. Rajinder Aggarwal, Addl. District Judge, Patiala has been enclosed, which is incomplete, as such, before giving any opinion, copy of above mentioned judgement be sent as enclosure, so that appropriate legal opinion may be given.”

3. Learned counsel for the petitioner contends that in the present case, the dispute pertains to a land, which is part of Kharsa No.640 situated in Village Mallo Majra, Tehsil and District Patiala. As per the case set up by

the complainant, the total land measuring 31.088 acres was acquired by the



Govt. of India vide notification dated 18.01.1977 and the possession was handed over to Ministry of Defence, Union of India on 23.05.1980. On 26.07.2013, an application was filed by Sweta Rai to the Administrative Officer, Station Headquarter, Patiala with the allegations that the land of Defence Department had been illegally occupied by certain persons. After demarcation, a notice under Section 4(1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'the Act') was issued to the petitioner. Vide order dated 07.02.2014 (Annexure P-3), the Estate Officer, Defence passed an eviction order against the petitioner and the petitioner was directed to vacate the land and to hand over to its vacate possession to the Defence Department. Learned counsel further contended that feeling aggrieved with the order dated 07.02.2014 (Annexure P-3), the petitioner filed an appeal before the District Judge-cum-Appellate Authority, Patiala. Vide judgement dated 04.07.2015 (Annexure P-5), the appeal of the petitioner was allowed and the order dated 07.02.2014 (Annexure P-3), passed by Estate Officer, Defence was set aside. Further, the Appellate Court granted liberty to the Ministry of Defence to get the land, forming part of Kharsa No.640, demarcated as per law and in case it was found that any encroachment had been made by the petitioner over the suit land, the respondents were granted liberty to obtain the possession thereof in accordance with law. However, after five years of passing of the judgement dated 04.07.2015 (Annexure P-5) by the Appellate Court, a fresh complaint was again filed by the complainant and the present FIR (Annexure P-1) was ordered to be registered against the petitioner for commission of the offence punishable under Section 447 IPC.



4. Learned counsel for the petitioner has submitted that the ingredients of the offence under Sections 441/447 IPC are completely missing in the facts and circumstances of the present case. In the FIR, there is no allegation against the petitioner with regard to the commission of trespass on the government land. Only it was alleged by the complainant that the petitioner had again started construction over her house within non-permissible limits of the security fence of unit. In fact, the petitioner was already in possession of the land in question and even the eviction notice issued by the complainant was already set aside by the Appellate Court, Patiala, vide judgement (Annexure P-5). Thereafter, neither the judgment dated 04.07.2015(Annexure P-5) was set aside by a competent court of law nor any demarcation was got conducted by the respondent/complainant. In fact, the main basis of getting the FIR registered against the petitioner was that the complainant had relied upon a demarcation report in a writ petition, CWP No.17230-2015 titled as “Harbhajan Singh Vs. Union of India”, wherein this Court had directed the demarcation of land forming part of Kharsa No.640 by the revenue authorities.

5. Learned counsel further submitted that from the bare perusal of Annexure P-6, it was apparently clear that the report did not reveal that the petitioner was in illegal possession of the land in question. Moreover, the report was prepared at the back of the petitioner and could not have been enforced against him. Even no *pucca* point was fixed before conducting the demarcation and the demarcation report was wrongly relied upon as the same was already rejected by the Appellate Court. Learned counsel next submitted that the ingredients of the offence under Section 447 IPC were not



fulfilled in the present case and the FIR and all subsequent proceedings are liable to be quashed by this Court.

6. On the other hand, learned State counsel assisted by learned counsel for the respondent No.2 have vehemently opposed the submissions made by learned counsel for the petitioner. It is submitted that the demarcation at the disputed land was got conducted from the Field Revenue staff and a report dated 02.03.2019 (Annexure R-1) was submitted in this regard. Even as per the site plan, the petitioner was an illegal possession of 50.83 square yards government land in Khasra No.649/2(6-9) and the said land was already acquired by the Government of India. Learned counsel further submitted that the present case was registered after taking the opinion from the DA(Legal) and the offence was found to have been committed by the petitioner.

7. I have heard learned counsel for the parties and perused the case file carefully.

8. Section 441 IPC provides for criminal trespass and the same has been reproduced below:-

“441. Criminal trespass-

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".

9. Further, Section 447 IPC provides punishment for criminal

trespass and the same has been reproduced below for the ready reference:-



“447. Punishment for criminal trespass.—

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both.”

10. Hon'ble the Supreme Court discussed the materials, which the High Court can assess to quash a FIR in **State of Andhra Pradesh Vs. Golconda Linga Swamy, (2004) 6 SCC 522** and held as follows:-

“5....Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866: 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction:

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;



(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an Instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....”

11. Still further in the matter of **State of Haryana Vs. Bhajan Lal**, **AIR 1992 SC 604**, the High Court had laid down the parameters for quashing of the FIR and held as follows:-

"(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 FIR 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 FIR 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 FIR 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."

12. From the perusal of case file, it is apparent that the notice under the Act was issued against the present petitioner and vide order (Annexure P-3) passed by the Estate Officer, Defence, the petitioner was ordered to be evicted from the land in question. However, the petitioner filed an appeal before the Court of Additional District Judge-cum-Appellate Authority and



and the impugned order passed by the Estate Officer, Defence was set aside. However, in the concluding part of the order, the respondent/complainant was granted liberty to get the land of Khasra No.640 demarcated as per law and in case, it was found that any encroachment had been made by the petitioner/appellant over the said land, the respondents would be at liberty to get the possession thereof in accordance with law. Thus, it is apparent that the present petitioner was already in possession of the land in question and it cannot be stated that the petitioner had committed the offence of criminal trespass of the land in question.

13. Even from the FIR, it has been alleged that the petitioner had started raising the construction over the land in question, which clearly shows that there was no criminal trespass. Even otherwise, from the litigation between the parties, it is clearly discernible that the parties had a dispute over the possession of the land in question and as per the documentary evidence, the petitioner had not yet been evicted by following due process of law. Thus, no offence under Section 447 of IPC is made out against the present petitioner.

14. In view of the above discussion, FIR No.0054 dated 18.05.2020 registered under Section 447 IPC at Police Station Pasyana, District Patiala and all subsequent proceedings arising therefrom are ordered to be quashed qua the present petitioner. However, the respondent/complainant/Ministry of Defence, Union of India shall be at liberty to get the land of Khasra No.640 demarcated from a competent revenue official, as per law and in case it is found that any encroachment had been made by the petitioner or any other



person over the said land, the respondent/complainant/Ministry of Defence will be at liberty to get the possession of the land, in accordance with law.

15. With the above-said observations made, the present petition stands allowed. Pending application, if any, shall also stand disposed off.

09.08.2024
mks

(N.S.SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO