

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-40052-2024
Date of Decision: 10.09.2024

MALKIT SINGH AND ORSPETITIONER

VERSUS

STATE OF PUNJAB AND ANRRESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Kuldip singh, Advocate
for the petitioners.

Mr. Jaspal Singh Guru, AAG, Punjab

Mr. V.K. Sandhir, Advocate
for respondents no.2

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 482 Cr.P.C for quashing of FIR No.57 dated 05.04.2024, Annexure P-1, registered under Section 379, 427, 506 of the Indian Penal Code (for short – ‘IPC’) at Police Station Dharamkot, District Moga, with all subsequent proceedings arising therefrom.
2. It is contended by the learned counsel for the petitioners that the petitioners have been falsely implicated in this case by the complainant. The

petitioners have nothing to do with the alleged incident wherein they were taken forcibly in Government vehicle to the police station by the Police of Police Post Kishanpura. It is further contended that on the day of alleged occurrence, i.e., 31.03.2024, the petitioners, alongwith their family, went in their own vehicle make Scorpio bearing registration No.HR-29V-1022, at about 10:30 AM, for attending Christian program at Dana Mandi, Makhu, which is about 60 Kms from the place of occurrence as such petitioners cannot be present at 7.00 P.M. at the place of occurrence on the said day because petitioner No.1, as per CCTV footage, had returned home at about 8:45 PM. Petitioner No.2 – Mehar Singh, at the time of alleged occurrence, was working in his fields, alongwith his wife, when the complainant party came there while hurling abuses. It is only on seeing petitioner No.2 working in his fields, the complainant party firstly gave injuries to the petitioner No.2 and thereafter named the petitioner No.2 as an accused whereas petitioner No.2 has nothing to do with the alleged occurrence and on his statement, FIR No.229 dated 26.10.2017 was lodged at Police Station Dharamkot, under Section 326, 323, 148, 149 IPC against the complainant – Bhupinder Singh, Manjit Singh and others, Annexure P-2. However, police did not take any action against the accused in FIR No.229 dated 26.10.2017 which compelled petitioner No.2 to file a private Complaint being NO.COMI-56/2018 against the accused persons before the learned Judicial Magistrate Ist Class, Moga, Annexure P-3.

3. It is also contended on behalf of the petitioners that the complainant party is aggrieved of the filing of suit for permanent injunction restraining them from interfering with the lawful, peaceful possession of the petitioners and dispossessing them from the land measuring 55 kanals,

which has been allowed vide judgment dated 26.08.2014, however, the same was dismissed. First appeal filed by the respondent No.2 before the learned Appellate Court was also dismissed vide judgment dated 13.12.2019. Respondent No.2 has filed Regular Second Appeal before this Hon'ble Court (being RSA No.1939 of 2022) which is pending for 22.01.2025. Therefore, the complainant party has cooked up a false and frivolous story to mount pressure on the petitioners in order to give civil matter, the shape of a criminal nature and moreso, there is an inordinate delay of five days in reporting the matter to the police as the alleged incident is of 31.05.2024 and FIR is lodged on 05.04.2024, which renders the impugned FIR liable for quashing with all its subsequent proceedings.

4. Notice of motion, as on the last date of hearing learned counsel for the petitioners did not cause appearance.

5. On the asking of the Court, Mr.Jaspal Singh Guru, Assistant Advocate General, Punjab, who is present in Court accepts notice for the State of Punjab and Mr.V.K.Sandhir, Advocate, has caused appearance and accepts notice on behalf of respondent No.2.

6. It is contended by the learned State counsel that there are specific allegations against the petitioners and they were very much present on the place of occurrence and therefore, were seen by the complainant's brother Manjit Singh while loading the Popular plants in the trolley behind their tractor make Swaraj 855 after uprooting from their (complainant's) fields. When complainant's brother raised noise, then they hurled abuses to him and sped away from the scene after giving life threats to their family. Therefore, a clear cut case of theft is made out against the petitioners and accordingly, the present petition is liable to be dismissed.

7. It is contended by the learned counsel for the complainant that the petitioners are the culprits as they have uprooted the Popular plants and took away the same after loading in their tractor trolley, which was attached behind their own tractor. When the remaining Popular plants were counted, then it was found that 130 popular plants were missing. As many as 170 plants approximately were damaged by them. Therefore, the petitioners have committed the offence under Sections mentioned in the FIR, Annexure P-1, as such, the present petition may be dismissed.

8. Heard and case file also perused.

9. Perusal of the allegations in the FIR are that complainant's brother – Manjit Singh, when went to take a round of the fields, saw petitioners and 2 unknown persons loading the popular plants in the trolley behind their tractor Swaraj 855 after uprooting from complainant's fields. It is surprising that it being so, then as to why Manjit Singh did not lodge the FIR and why complainant only? The complainant, in this way, is not an eye witness. His version seems to be purely hear say version, and not exact narration of incident, if any happened. The complainant or his brother have not given any registration number of the tractor/trolley, which further belies the complainant version. There is no document supported to by the complainant in his statement that as to how the land measuring 16 Kanals becomes under joint ownership of the Central Government and the complainant.

10. It has also come on record that the complainant party and the petitioner party are having a past history of fighting and litigating against each other. RSA No.1939 of 2022 is also pending before this Court for 22.01.2025 and the beginning of this civil litigation began from the year

2008. FIR No.229 dated 26.10.2017 was registered against the complainant party on the statement of Mehar Singh, who is petitioner No.2 herein, but due to inaction on the part of the police, respondent No.2 filed a private complaint – COMI-56/2018 against the complainant, his brother – Manjit Singh and others. As such, the complainant party has attempted to create a defence/counter case against the petitioners so as to pressurize them either to compromise the matter or to bring them on their knees under the pressure of present FIR. Therefore, the complainant version does not inspire this Court at all as far as its truthfulness is concerned.

11. Though, the counsel for the petitioner has placed reliance on various judgements of the Hon'ble Supreme Court or other High Courts in the petition, itself, and one of such judgement which is directly applicable to this case is Two Judge Bench judgement of Hon'ble Supreme Court in **Vesa Holdings P. Ltd. vs. State of Kerala (2015) 8 SCC 293**, wherein para 9 is relevant, which reads as under:-

“9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complainant does not disclose any criminal offence at all. Criminal proceedings should not

be encouraged when it is found to be malafide or otherwise an abuse of the process of the Court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount an abuse of the process of court and the High Court committed an error in refusing to exercise committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

12. Therefore, this Court is fully satisfied that the present FIR lodged on the statement of the complainant/respondent No.2 is an exercise of malafide in connivance with the local police, in order to create a defence and counter case against the petitioners party to use against them in FIR No.229 dated 26.10.2017 and due to this reason, the complainant/respondent No.2 party failed to fill up lacunae in their story of theft of popular plants, such as amount of total loss to make out a case under Section 427 IPC; age and purchase of popular plants; registration number of tractor/trolley; as to why Manjit Singh is not complainant, who had allegedly seen loading of damaged popular plants etc. etc.

13. Moreover, this Court is also satisfied that the alleged incident is of 31.03.2024 at 7.00 P.M. and the FIR was lodged on 05.04.2024 at 09:55 hrs, i.e., after a delay of 4 days. Moreso, the complainant party failed to trace the identities of two unknown persons also, which further casts doubt on the truthfulness of complainant version that their intentions were only to implicate the petitioners.

14. Consequently, this Court, while exercising its inherent power under Section 482 Cr.P.C., thinks it appropriate to allow the present petition and quash the FIR qua the petitioners i.e., FIR No.57 dated 05.04.2024, Annexure P-1, registered under Section 379, 427, 506 IPC, at Police Station Dharamkot, District Moga, with all subsequent proceedings arising therefrom.

10.09.2024
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(SANDEEP MOUDGIL)
JUDGE

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