

2024:PHHC:090886



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

262

CRM M-49185 of 2021
Date of Decision: 19.07.2024

Mohinder Singh and others ...Petitioners
Versus
State of Punjab and another ... Respondents

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

Present : Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioners.

Mr. Deepinder Brar, Sr. DAG, Punjab.

None for respondent No. 2.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash FIR No.0008 dated 20.01.2021 under Sections 447, 506 and 34 IPC and Section 27 of (Act No. 54) of Arms Act, registered at Police Station Tapa Mandi, District Barnala (Annexure P-1) and all subsequent proceeding arising therefrom.

2. The FIR in the present case was registered on the basis of the statement made by Sukhdev Singh, Panch. The English translation of statement of Sukhdev Singh, which formed the basis of registration of the FIR in the present case reads as under:-

"Statement of Sukhdev Singh, Panch, son of Maghar Singh son of Nohna Singh, resident of Near Ravidass Mandir, Daraka, aged about 48 years, Mobile No.

97812 45889. Stated that I am residing at above noted address and at present Panch of Village. There exists San Wala Chhappar (Pond) in our village, having Govt. Primary School at its western side, house of Jagtar Singh son of Atma Singh, resident of village Daraka on eastern side, house of Mohinder Singh son of Sukhdev Singh, resident of village Daraka on northern side & Mainian Wali Gali on southern side A pucca boundary wall is constructed around said pond. The said land is shamlat, owned by Gram Panchayat, Village Daraka. Moreover, the land situated behind the house of Mohinder Singh is shamlat, owned by Gram Panchayat, village Daraka. But said Mohinder Singh is willing to get fitted gate on backside of his house and this way, to take possession on Panchayati land in forcible manner. Gram Panchayat has restrained him a number of times from doing so. Today, a Nagar Kirtan was organized in our village in connection with Parkash the devotees Purab of Sri Guru Gobind Singh Ji, where the devottes (Sangat) as well as Gram Panchayat were present. I came to know at about 4.00 P.M. that Mohiner Singh is getting fitted gate in shamlat land behind his house and this way, is taking forcible possession on Panchayat land. On this, I arrived at the spot and found that said Mohinder Singh with his elder son Jaspreet Singh & younger son Jaswant Singh has removed the wall on backside of his house and getting fitted a gate over there, in order to encroach upon Panchayati shamlat land. We restrained him from doing so, on which, Mohinder Singh, armed with licensed gun, alongwith his sons started quarrelling with us to eliminate us. However, we ran away from the spot and

managed to save our lives. I have come to report you the matter, when you are met at gate of Police Station. Statement got recorded with you, gone through, heard, it is correct. Hence due legal action may be taken against said Mohinder Singh, his sons Jaspreet Singh & Jaswant Singh. Sd/ Sukhdev Singh”.

3. Learned counsel for the petitioners contended that the petitioner No. 1 is an ex-serviceman and is resident of village Daraj, Tehsil and District Barnala. The petitioners No. 2 and 3 are his two young sons. All the three petitioners belong to respectable family. He further contended that as per the allegations levelled by the complainant, there is a shamlat land adjoining the house of the petitioner and by opening the gate on the backside, the petitioner No. 1 wanted to take forcible possession of the Panchyat land. At about 04.00 p.m. on 20.01.2021, when the petitioner No.1 was about to open a gate by breaking the backside wall of his house with an intention to take possession of the Panchyat land, the complainant and other persons had reached there. When they spotted by the petitioners, petitioner No. 1 chased them with his licensed gun and extended threats to kill him. Learned counsel for the petitioners contended that even from the allegations levelled by the complainant in the FIR (Annexure P-1), no offence under Section 447, 506 and 34 IPC and Section 27 of the Arms Act is made out against the petitioners. Learned counsel contended that in fact the complainant had lodged the FIR due to party faction in the village. He further contended that a demarcation in the village was conducted and as per the copy of the

demarcation report and the site plan (Annexures P-2 and P-3), there was no encroachment by the present petitioners. Even otherwise, there are two gates of the house of the petitioners and the petitioners never wanted to encroach upon any shamlat land. Learned counsel also relied upon the CD and photographs of the incident as (Annexures P-4 and P-5) to contend that the petitioners never encroached upon any shamlat land. The petitioners also moved representation to the higher police officers to investigate the matter fairly, but no action was taken on the said requests.

4. Learned counsel for the petitioners further contended that even, no offence under Sections 447, 506 and 34 IPC and Section 27 of the Arms Act is made out against the petitioners. In fact, Section 447 IPC provides for the punishment for the criminal trespass. Section 441 IPC defines 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”.

5. In fact, entering into or upon the property in possession of another with intention to commit an offence or to intimidate, insult

or annoy any person in possession of such property constitutes offence of criminal trespass. So, the aim of the accused for committing an offence or intimidation, insult or annoyance must be proved. In the instant case, such ingredients of criminal trespass are completely missing. Apart from that, it has been alleged that the petitioners had threatened the complainant. However, empty threats do not make out an offence under Section 506 IPC. Apart from that, the weapon was kept by petitioner No. 1 at home and had a valid armed license. Thus, the provisions of Section 27 of the Arms Act had been wrongly invoked by the police. Learned counsel submitted that the petitioners had opposed the candidature of the respondent No. 2/complainant in the Panchayat elections in the village and due to this, respondent No.2 was nursing a grudge against the petitioners. Thus, the prosecution is highly motivated and the criminal proceedings are an instrument of misuse of the process of the law.

6. On the other hand, learned State counsel has opposed the submissions made by the petitioners on the ground that the FIR was based on correct facts and the petitioners had tried to commit criminal trespass on the Panchayat land by breaking the backside wall of his house and the investigation has already been completed. Learned State counsel further submitted that the police report under Section 173 Cr.P.C. has already been presented before the trial Court and the case is listed for framing of charge before the trial Court.

7. I have heard the rival contentions made by learned counsel for the parties and perused the record.

8. In the various judgments passed by the Hon'ble Supreme Court and this Court, it has been held repeatedly while referring to the provisions of Section 482 Cr.P.C. that nothing under the Code of Criminal Procedure shall deem to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in the matter of Ajay Mitra Vs. State of M.P. & others, 2003(3) SCC 11, has held as follows:-

“Leave granted.

These appeals by special leave are directed against the judgment and order dated January 16, 2002 of High Court of Madhya Pradesh, by which three Petitions filed by the appellants under Section 482 Cr.P.C. were dismissed.

xxx xxx xxx xxx xxx xxx

Thereafter, the appellants filed three Criminal Miscellaneous Petitions under Section 482 Cr.P.C. before the High Court for quashing of the FIR and the proceedings of the case before the learned Magistrate. After hearing the parties, the High Court held that the investigation had not yet commenced in connection with the FIRs which had been registered at the Police Station and, therefore, the Petitions were pre-mature and accordingly all the three Petitions were rejected.

XXX XXX XXX XXX XXX XXX

The High Court has held that the Petitions filed by the appellants for quashing the complaint and the FIRs registered against them are pre-mature. The question which arises is that where the complaint or the FIR does not disclose commission of a cognizable offence, whether the same can be quashed at the initial stage? This question was examined by this Court in State of West Bengal & Ors. V. Swapan Kumar Guha & Ors., AIR 1982 Supreme Court 949 and it was held that the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation. It is surely not within the province of the police to investigate into a Report (FIR) which does not disclose the commission of a cognizable offence and the code does not impose upon them the duty of inquiry in such cases. It was further held that an investigation can be quashed if no cognizable offence is disclosed by the FIR. The same question has been considered in State of Haryana & Ors. V. Ch. Bhajan Lal & Ors. 1991(3) RCR (Criminal) 383 (SC) and after considering all the earlier decisions, the category of cases, in which the Court can exercise its extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. either to prevent abuse of the process of any Court or to secure the ends of justice, were summarised in para 108 of the Report and sub- paras 1 to 3 thereof are being reproduced hereinbelow :

"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 F.I.R. 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."

9. The said judgment by the Three Judges Bench of the Hon'ble Supreme Court had affirmatively held that where an FIR does not disclose the essential requirements of the penal provision or does not disclose the commission of a cognizable offence, the same can be quashed at the initial stage. Reference has also been made to the judgment of Hon'ble Supreme Court in case **"State of Haryana and others Vs. Ch. Bhajan Lal & Ors., 1991(3) RCR (Criminal) 383)**, in which, it was observed that the High Court can exercise its extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.P.C. 1973 either to prevent abuse of the process of any Court or to secure the ends of justice.

10. The Hon'ble Supreme Court of India in **"R Kalyani vs. Janak C. Mehta"** reported as 2009 (1) SCC 516 has held as under:

"Leave granted.

2. Appellant lodged a First Information Report (FIR) against the respondents on or about 4.1.2003 under Sections 409, 420 and 468 read with Section 34 of the Indian Penal Code.

3. First and second respondent approached the High Court for an order for quashing of the said FIR as also the investigation initiated pursuant thereto or in furtherance thereof. The High Court allowed the said proceedings by reason of the impugned order dated 29.4.2004. Mr. K.K. Mani, learned counsel appearing on behalf of the appellant, would, in support of the appeal, contend :

(1) The High Court exercised its inherent jurisdiction under Section 482 of the Code of Criminal Procedure wholly illegally and without jurisdiction insofar as it entered into the disputed questions of fact in regard to the involvement of the respondents as the contents of the first information report disclose an offence of cheating, criminal breach of trust and forgery.

(2) While admittedly the investigation was not even complete, the High Court could not have relied upon the documents furnished by the defendants either for the purpose of finding out absence of mens rea on the part of the applicants or their involvement in the case.

(3) Respondent Nos.1 and 2 herein being high ranking officers of M/s. Shares and Securities Ltd., a company dealing in shares, were vicariously liable for commission

of the offence being in day to day charge of the affairs thereof.

(4) An offence of forgery being a serious one and in view of the fact that the respondent No.2 forwarded a letter purporting to authorise the accused No.3 to transfer shares to the National Stock Exchange, he must be held to have the requisite intention to commit the said offence along with the respondent No.3.

(5) In any view of the matter, the respondent No. 3 being not an applicant before the High Court, the entire criminal prosecution could not have quashed by the High Court.

xxx xxx xxx xxx xxx xxx

In Hamid v. Rashid alias Rasheed & Ors. [(2008) 1 SCC 474], this Court opined :

"6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 Criminal Procedure Code saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well established principle

that every Court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court."

xxx xxx xxx xxx xxx xxx

One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

xxx xxx xxx xxx xxx xxx

A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in-charge of the affairs of the company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created. In Sham Sunder & Ors. v. State of Haryana [(1989) 4 SCC 630], this Court held :

"9. But we are concerned with a criminal liability under penal provision and not a civil" liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not."

xxx xxx xxx xxx xxx xxx

27. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.

xxx xxx xxx xxx xxx xxx

30. The appeal is dismissed with the aforementioned observations.

11. A perusal of the above judgments would show that the High Court cannot be a helpless spectator, when it is made out that the criminal prosecution is *mala-fide* and an abuse of process of the Court. The High Court has inherent powers and a corresponding duty to prevent the abuse of the process of the Court and to secure the ends of justice. If the facts of the case are considered in detail, it is apparent that it is an indicator of *mala-fide* on the part of the complainant. Even, it has been stated that the petitioner wanted to open a gate on the backside of his house and wanted to encroach upon the Panchayat land. However, already there are two gates in the house of the present petitioners. Moreover, the provisions of Section 506 IPC have been wrongly invoked as empty threats did not constitute an offence under Section 506 IPC. Apart from that, such threat was not followed by any overt act and did not constitute a criminal offence. Still further, the gun, which was allegedly recovered from petitioner No. 1, who is an ex-serviceman, is a licensed weapon of petitioner No. 1. Thus, apparently, the FIR has been got registered by the

complainant with a hidden motive and by exercising the inherent powers of the Court, the present FIR and all subsequent proceedings are liable to be quashed by this Court.

12. In view of the above discussion, the present petition is allowed and the FIR No.0008 dated 20.01.2021 under Sections 447, 506 and 34 IPC and Section 27 of (Act No. 54) of Arms Act, registered at Police Station Tapa Mandi, District Barnala (Annexure P-1) and all subsequent proceeding arising therefrom are ordered to be quashed qua the present petitioners only.

19.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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