

2024:PHHC:168589



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

**CRM-M-47360-2024
Date of Decision: 23.09.2024**

GOBIND PARSHAD SINGH GREWAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Inderjit Luthra, Advocate
for the petitioner.(Through VC)

Mr. Jaspal Singh Guru, AAG, Punjab

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023, praying for setting aside the impugned order dated 06.09.2024,(Annexure P-7) passed by the Judicial Magistrate Ist Class, Ludhiana, in case – COMI-490-2024 and also to quash the impugned FIR No.0277 dated 11.09.2024 under Section 303(2), 324(5), 329(3), 333 of the Bhartiya Nyaya Sanhita 2023, registered at Police Station Division No.7, Police Commissionerate, Ludhiana, (Annexure P-8), alongwith all its consequential proceedings arising therefrom.

2. The facts of the case in brief are that the petitioner is the owner in possession of the land situated in village Jamalpur Awana, Tehsil & District

Ludhiana, since 1971. Demarcation of the land was undertaken by the Revenue Authorities, Ludhiana, on the directions of this Court issued in CWP-5295-2022, vide order dated 26.05.2022, which was filed by the wife of the petitioner. The case of the petitioner is that private respondent No.4, in criminal connivance with his associates, in order to encroach upon the land of the petitioner trespassed into the land by demolishing the fence, but the attempt of the respondent and his associates was foiled by the caretakers and labourers of the petitioner. However, the petitioner made a complaint to respondent No.3 - SHO, Police Station Division No.7, Ludhiana, for registration of FIR in the matter but no action was taken and the same was kept pending enquiry. The private respondent, thereafter, filed a private complaint – COMI-490-2024,(Annexure P-6) against the petitioner before the Illaqa Magistrate for issuing directions to the concerned SHO, Police Station Division No.7, Ludhiana, for registration of FIR against the petitioner, pursuant to which, a false FIR no.0277 dated 11.09.2024 u/s 303(2), 324(5), 329(3), 333 BNS, was registered against the petitioner.

3. It is contended by the learned counsel for the petitioner that great prejudice has been caused to the petitioner as under the orders of the Judicial Magistrate Ist Class, Ludhiana, at Annexure P-7, a false FIR has been registered against the petitioner wherein he has been falsely implicated in the FIR at the instance of respondent No.1. As such, the impugned order and FIR are liable to be set aside/quashed.

4. Heard learned counsel for the petitioner.

5. A perusal of the record in hand as well as the facts mentioned herein above, it can be culled out that both the parties claim their possession over the plot in question. The private respondent No.4 in his complaint has alleged that he has filed a Civil Suit (No. CS-3437-2024 titled Inderjit Singh Bhatia Vs. Gobind

Parshad Singh and others) which is pending before Civil Judge Junior Division, Ludhiana and injunction order being passed therein restraining the accused/respondents (including petitioner herein) from interfering in possession of private respondent over the said plot illegally and forcibly. Thus, the ownership of the plot in question is yet to be determined by the learned Civil Court.

6. Moreover, the JMIC has also passed the order, (Annexure P-7) on the basis of allegations in the complaint before him which are yet to be determined on the basis of investigation to be conducted by the police by collecting evidence. It is the case of the petitioner that his complaint, Annexure P-5, is pending enquiry before the Police which also will be looked into by the police during investigations. As such, this Court is not inclined to interfere in the matter in view of the disputed question of title/ownership of the plot in question and other disputed facts.

7. A two Judge bench of the Hon'ble Supreme Court “ *'HMT Watches Limited vs M.A. Abida'* (2015) 11 SCC 776” has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended for determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

8. Further, Recently, in *'Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharastra'* AIR 2021 SC 1918, the Hon'ble Supreme Court reiterated the guiding principles to quash proceedings under Section 482 of Cr.P.C and held as follow-:

"80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive

steps to be adopted", during the pendency of the quashing petition under [Section 482](#) Cr.P.C , 1973 and/or under [Article 226](#) of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the [Code of Criminal Procedure](#) contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under [Section 482](#) Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self restraint imposed by law, more particularly the parameters [laid down by](#) this Court in the cases of *R.P. Kapur* (supra) and *Bhajan Lal* (supra), has the jurisdiction to quash the FIR/complaint;*

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482](#) Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted"*

and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during investigation or till the investigation is completed and/or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., 1973 while dismissing/disposing of the quashing petition under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India.

xvii) *Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.* xviii) *Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must*

clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

9. Taking into consideration the facts discussed herein above along with the mandate stated by the Apex court in **“*Lalita Kumari Vs State of U.P, AIR 2014 SC 187,*”** for cognizable offences, duty is cast upon the police to register FIR and to conduct investigation as per law.
10. Therefore, in light of the above discussion, this Court cannot delve into disputed questions of fact and examine the probable defence taken by the petitioner in the present petition while invoking the power under [Section 482](#) of the Cr.P.C.
11. Resultantly, this Court does not find any merit in the petition in hand which is hereby ordered to be dismissed accordingly.

23.09.2024
Meenu

(SANDEEP MOUDGIL)
JUDGE

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