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

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Date of Decision: November 06, 2024

Himanshu Juneja

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Abhijeet Chaudhary, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 praying for an appropriate order or direction for quashing of the order, dated 03.10.2024, passed by learned Additional Sessions Judge, Gurugram, and the order, dated 29.10.2022, passed by learned JMFC, Gurugram framing charges against the petitioner in FIR No.261 of 2017 under Sections 447, 448, 506 and 34 IPC, registered at Police Station Sector 53, Gurugram, and the criminal proceedings in connection with the same. It is further prayed to stay the trial in the aforesaid case and no coercive steps be taken against the petitioner during pendency of the present petition.

2. Succinctly, the facts of the case are that respondent No.2 lodged an FIR alleging therein that on 24.11.2017 at about 12.00 p.m. they

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were having meeting with the officials of M/s. Emaar, who was their developer pertaining to the civil suit which was filed by their association against M/s Puri Constructions Ltd.. M/s Puri Constructions was trying to threaten some of their office bearers including their Secretary on phone to hand over the possession of the common area behind Villa 1 and 2. M/s Puri Constructions Ltd. through some of its assignees/employees/agents headed by Mr.Himanshu Juneja and Mr.Arora were bent upon in taking forceful possession of the said area. Compelled with the situation they filed a civil suit which was pending adjudication in the Civil Court. However, during the meeting, Mr.Himanshu Juneja with two unknown people forcibly entered into their complex and threatened the executives of the association to break the periphery wall of the complex. They were threatened not to stop them failing which they would face the consequences of their life. Thereafter a group of 30-40 labourers alongwith JCB machine headed by Mr.Himanshu Juneja have broken the boundary wall of their complex from the Golf Course road side. They called the police for help. It was alleged that Himanshu Juneja alongwith certain unknown persons had not only placed the raw material in front of the broken wall but also threatened them. Request was made to take legal action against all the culprits.

3. On registration of the FIR, investigation commenced and on completion of the same, challan under Section 173 Cr.P.C. was presented. Learned trial Court framed the charges vide impugned order, dated 29.10.2022. Aggrieved by the same, the petitioner assailed the same before learned Additional Sessions Judge by way of filing revision petition,

however, finding no merit in the same, revision petition was declined by



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learned Revisional Court vide impugned order, dated 03.10.2024. Aggrieved with the same, petitioner is before this Court by way of filing the present petition for setting aside both the impugned, i.e. order dated 29.10.2022 and 03.10.2024.

4. Learned counsel for the petitioner has vehemently contended that the dispute between both the sides is purely civil in nature. He submits that the petitioner had earlier filed a police complaint against respondent No.2/complainant and as an act of vengeance, the present FIR was lodged by respondent No.2. He submits that from the allegations made in the FIR, no offence under Section 447, 448, 506 read with Section 511 IPC is made out. He has submitted that from a bare reading of the statutory provisions of Sections 447, 448 and 506 IPC, the offence of criminal trespassing, as alleged, is not made out against the petitioner. He submits that filing of the civil suit by respondent/complainant against the petitioner itself proves that the dispute is civil in nature. To buttress his arguments he has submitted that as per the law settled by Hon'ble Apex Court in **Bhajan Lal vs State of Haryana** AIR 1992 SC 604, prosecution of the petitioner in the abovesaid FIR in nothing but an abuse of the process of the Court. He further relies upon **Salib alias Shalu alias Salim vs State of UP and others** 2023 SCC Online SC 947, **Vishnu Kumar Shukla vs State of UP** AIR 2024 SC 90, **Tarachand vs State of M.P.** MANU/CG/0072/2015, **Pradeep Kumar vs State of UP and others** 2024: AHC: 12955, **Kanwal Sood vs Nawal Kishore** (1983) 3 SCC 25, **Mathri vs State of Punjab**, AIR 1964 SC 986, **Manik Taneja vs State of Karnataka** (2015) 7 SCC 423, and **Somjeet**



thus has submitted that in the facts and circumstances of the present case, this Court should invoke its power under Section 482 Cr.P.C. for quashing of impugned orders. He submits that from bare reading of the statutory provisions of Sections 441 and 447 IPC, the essential ingredients for constituting the offence are not made out and hence there being no offence made out for criminal trespass, the impugned orders are totally in violation of the law settled. He has vehemently contended that learned trial Court and revisional Court have miserably failed in appreciating the statutory provisions of the law settled and thus have arrived at a conclusion of framing the charges against the petitioner which being unsustainable in the eyes of law, deserves to be set aside.

5. Heard.

6. On hearing learned counsel for the petitioner and perusing the record it is deciphered that respondent No.2 has lodged the FIR against the petitioner on the basis of the allegations as mentioned above. It has been alleged by the complainant that the petitioner threatened them and after trespassing entered in the property in their possession alongwith other persons and JCB machine. Thereafter the wall was demolished. It is further revealed from the record that the complainant side had filed a civil suit against the petitioner which is pending adjudication before the Civil Court. Investigation was conducted by the Investigating Agency and finding the material in the FIR, challan was presented against the petitioner under Section 173 Cr.P.C.. Learned trial Court, on the basis of the material produced by the prosecution has framed the charges against the petitioner



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vide order dated 29.10.2022.

7. This order was further assailed by the petitioner by filing revision petition before the revisional Court, however, the revision filed by the petitioner was dismissed and the order passed by the trial Court was upheld.

8. The crux of the arguments advanced by learned counsel for the petitioner before this Court is that dispute in the case in hand is of civil nature but FIR has been lodged in order to make it a criminal case. Besides this he has argued that the offence, as alleged, is not made out against the petitioner. However, this Court finds the arguments advanced by learned counsel for the petitioner to be misconceived. The case in hand is not for quashing of the FIR but for quashing of the charges framed against the petitioner. As per the law settled, at the time of framing of charge, the Court is not supposed to weigh the evidences so as to arrive at a conclusion whether the accused is guilty or not but the Court is to see whether on the basis of material produced by the prosecution, prima facie case is made out against the petitioner. The trial Court found the material to be sufficient for framing the charges against the petitioner. However, whether petitioner is guilty or not that would *inter alia* depend upon the outcome of the trial.

9. Hon'ble Apex Court in The State of Andhra Pradesh vs Vangaveeti Nagaiah 2009(12) SCC 466 has observed as under:-

“9. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time trial. At the time of framing the



charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in **R.P.Kapur vs State of Punjab** AIR 1960 Supreme Court 866.

10. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.”

10. There is no dispute regarding the judgments relied upon by learned counsel for the petitioner, however, the same are distinguishable on the facts and circumstances of the present case when appreciated on the anvil of the law settled. This Court does not find any infirmity in the impugned order passed by the trial Court and the revisional Court and thus, the petition being devoid of any merit, is hereby dismissed. However, nothing said herein above shall be construed as an expression of opinion on the merits of the case.

November 06, 2024

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

(RAJESH BHARDWAJ)
JUDGE