

2025:PHHC:015570



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

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CRM M-26396 of 2023

Date of Decision:31.01.2025

Satpal

...Petitioner

Versus

State of Haryana

... Respondent

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

Present : Mr. Roopak Bansal, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 66 dated 25.03.2022 under Section 3 of Public Property (Prevention of Damage) Act, 1985 registered at Police Station Bhattu Kalan, District Fatehabad (Annexure P-1) and all subsequent proceedings arising therefrom.

2. The FIR in the present case was registered on the basis of the complaint moved by Sub-Divisional Officer Bhattu and the same has been reproduced as under:-

*“NO. 12/31-W- DT 07/01/2022 To SHO Bhattu Kala
Subject Moga 22670-R Chak of Kheri Rajbaha Village
Kirdan regarding taking legal action against the opening
of Khal without permission. According to the complaint
Satpal son Shri Kurdaram has broken and opened the*

closed khal without permission, which is wrong according to the rules. Therefore, proper action be taken for damage to government property. So that no other shareholder also breaks the Khal and make Naka. Sandeep Singh Sub Divisional Canal Officer Bhattu W/S Sub Division Bhattu”.

3. Learned counsel for the petitioner contends that the State of Haryana had enacted the Haryana Canal and Drainage Act 1974 (hereinafter to be referred as ‘**the Act of 1974**’) with a view to regulate irrigation, navigation and drainage in Haryana. Section 2 (15) of the Act of 1974 defines a water course and the same has been reproduced below:-

“Section 2(15) “watercourse” means any channel including all its subsidiary works which is supplied with water from a canal, but not maintained at the cost of the State Government, and is sanctioned under this Act or is in existence under an agreement or by prescription”.

4. Learned counsel further contends that Section 24 of the Act of 1974 provides for restoration of demolished or altered etc., water course and the same has been reproduced below:-

24. (1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under sub-section (1) the SubDivisional Canal Officer may, after making such enquiry as he may deem fit, enquiry, by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty-one days, as may be specified in the notice: Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.

(3) If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub Divisional Canal Officer may cause the watercourse or temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal officer may order any amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same shall be recoverable as arrears of land revenue.

(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer. May prefer an appeal within fifteen days of the passing of such order to the Divisional

Canal Officer, whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue”.

5. Learned counsel contends that in case a person demolishes, alters, enlarges or obstruct a water course or a temporary water course or causes any damage thereto, any person affected may apply to the Sub-Divisional Canal Officer (hereinafter to be referred as ‘**the SDCO**’) for issuance of directions to restore the same to its original condition.

6. Still further, the SDCO may issue notice after holding inquiry to such person, who was found responsible for demolishing, altering, enlarging, obstructing or causing damage, to restore the water course at his own costs within a period of 21 days. In case, such person fails to restore water course, the SDCO may order recovery of a sum not exceeding of Rs. 500/- from the defaulting person by way of penalty. Even, out of this sum so recovered, the SDCO may order any amount to be paid to the aggrieved person for the damage caused to him. In case, defaulting person does not pay the penalty, it could be recovered as arrears of land revenue. He further contends that in the present case, the SDCO could proceed against the person under the provisions of Section 24 of the Act of 1974 and the FIR has been falsely got registered by the present complainant.

7. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had demolished the water course (Khal) without permission of the complainant and it was a punishable offence under Section 3 of the Prevention of Damage to Public Property Act, 1984. He further contends that after completion of investigation, challan has already been presented before the Court and the case is pending against the petitioner for framing of charge.

8. I have heard learned counsel for the parties and perused the record.

9. In fact, the State of Haryana had enacted the Haryana Canal and Drainage Act, 1974 which is an exhaustive code for the construction and maintenance of water courses of Irrigation Department in the State of Haryana. This Court finds sufficient force in the submission made by the learned counsel for the petitioner that the case of the petitioner shall be covered by the provisions of Section 24 of the Act of 1974. In the present case, it has been alleged that the petitioner had demolished a water course and in such an eventuality, the SDCO was competent to hold an inquiry against the petitioner for demolishing the water course and may also order the petitioner to restore the water course within a period of 21 days at the expense of the petitioner. Still further, the SDCO could also order recovery of a sum not exceeding of Rs.500/- from the defaulting person by way of a

penalty. In case, the penalty was not paid, the same shall be recovered as arrears of land revenue. In the present case, there is no such allegation that any inquiry was held by the SDCO against the present petitioner rather he got the present FIR registered against the present petitioner, which was not maintainable against him.

10. In fact, the object and idea of enacting the Prevention of Damages to Public Property Act 1984 was to curb the vandalism and damage to the public property including the destruction and damage caused during the riots and public commotion. A need was felt to strengthen the law to enable the authorities to deal with the cases of damage to public property. Even, the Prevention of Damages to Public Property Act 1984 applied to the situations, where public property like government buildings or infrastructures were damaged or destroyed during the riots or public demonstration and even it is unsafe to invoke the provisions of this Act for such minor issues, which may defeat the very purpose of enacting the law. Still further, the State of Haryana has already enacted the Act of 1974 for dealing with the construction, demolition, alteration and restoration of water course and the Act of 1974 is a self-contained and exhaustive Code. Even, the Act of 1974 provides for restoration of a water course, which is a civil action and normally the authorities should not resort to registration of a FIR in such cases. It appears that in the instant case, the SDCO had proceeded to lodge the FIR in an exceptional

hurry without even holding an inquiry against the petitioner and the act of registration of the FIR against the petitioner clearly smacks of malafide.

11. 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.

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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.

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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."

12. 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.

13. 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.

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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."

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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.

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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."

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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.*

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30. *The appeal is dismissed with the aforementioned observations.*

14. In view of above, the FIR No. 66 dated 25.03.2022 under Section 3 of Public Property (Prevention of Damage) Act, 1985 registered at Police Station Bhattu Kalan, District Fatehabad (Annexure P-1) and all consequential proceedings arising therefrom are ordered to be quashed qua the petitioner.

31.01.2025
amit rana

(N.S.SHEKHAWAT)
JUDGE

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