



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

1) CRM-M-8629-2011 (O&M)
Date of decision: 21.01.2025

Harbir Singh Gill and others Petitioners

Versus

Kulbir Singh ...Respondent

2) CRM-M-37083-2011 (O&M)

Rajbir Singh and another Petitioners

Versus

Kulbir Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.S. Narula, Advocate
for the petitioners (in CRM-M-8629-2011).

Mr. Pankaj Bali, Advocate
for the petitioner (in CRM-M-37083-2011).

Mr. Suvir Sidhu, Advocate and
Mr. Gurinder Singh Dhillon, Advocate
for the respondent in both cases.

HARPREET SINGH BRAR, J.

1. This order shall dispose of both the above mentioned petitions as they arise from similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M-8629-2011.

2. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for quashing of Criminal Complaint No.22833 of 2010 dated 30.07.2010 (Annexure P-1) titled as 'Kulbir Singh Gill Vs. Harbir Singh Gill and others', summoning order



dated 05.01.2011 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Chandigarh against petitioners under Sections 447/457/341 of IPC and all consequential proceedings arising therefrom.

3. Succinctly, the facts, as alleged, are that the petitioner-Harbir Singh Gill, petitioner-Rajbir Singh and the respondent-Kulbir Singh are real brothers who were residing together as a joint family in House No.140, Sector 27-A, Chandigarh. In view of a verbal settlement arrived at in the year 1993, at the instance of their father Dilbag Singh, the brothers were given possession over different portions of the said house. The respondent was residing in a government accommodation, while he and his family retained possession over their portion of the house by keeping their articles there under lock and key. Subsequently, Dilbag Singh passed away on 28.08.2003.

4. In the month of May, 2008, the petitioners started construction to alter the said property. Suspecting foul play, the wife of the respondent approached the police and submitted a written request. However, no action was taken, causing the complainant to submit a complaint before the SSP on 01.06.2010. Thereafter, the cousin sister of the complainant namely Kanwal Preet Kaur informed the complainant that the petitioners have connived with each other and stolen the articles from his portion of the house. Accordingly, the complaint(supra) was instituted under Section 156(3) Cr.P.C.

5. Learned counsel for the petitioners *inter alia* contends that the father of petitioner No.1- Dilbag Singh died on 28.08.2003. During his lifetime, he executed as many as five wills; the latest was duly executed on 09.09.1996. Per the said will, the deceased bequeathed the house in question onto his granddaughters namely Dhanpreet Kaur and Chetanbir Kaur (petitioner No.3), in equal share. The respondent has instituted the complaint (supra) out of



infuriation at the wishes of the deceased, as highlighted by the will dated 09.09.1996. Further, the respondent had filed a suit for declaration and permanent injunction against the petitioners with respect to the portion allegedly owned by him. However, the same was dismissed vide judgment dated 30.09.2016 (Annexure P-17) passed by the learned Additional Civil Judge (Senior Division), Chandigarh. An appeal was preferred against the same by the respondent, which was also dismissed vide judgment dated 12.12.2024 passed by the learned Additional District Judge, Chandigarh. Moreover, the respondent has himself admitted that he resides in a government accommodation, as such he is not an owner in possession. Learned counsel further contends that the nature of possession enjoyed by children in their parents' house is merely that of licensees. Also, it must be noted that in the Union Territory of Chandigarh, partition is not allowed. The respondent had approached the police in order to lodge an FIR but no action was taken as the allegations were found baseless on enquiry. Lastly, the impugned order dated 05.01.2011 has been passed in the most cryptic fashion, without providing any cogent reasons. Learned counsel places reliance on the judgments rendered by this Court in ***Gurpreet Singh vs. State of Punjab 2016(1) R.C.R. (Civil) 324, Manmohan Singh vs. Union Territory, Chandigarh and others 2016(1) R.C.R.(Civil) 838, Shamsher Singh vs. District Magistrate, U.T. Administration, Chandigarh and others*** in CWP No. 6365 of 2015 decided on 20.02.2017 and ***Bhartu vs. Ram Sarup 1981 PLJ 204.***

6. *Per contra* learned counsel of the respondent contends that at the instance of Dilbag Singh, his deceased father, a verbal settlement was effected. The same is also reflected in two of his registered wills i.e. will dated 18.08.1993 and will dated 25.03.1996. He further submits that the civil suit for



declaration and permanent injunction was dismissed mainly on the ground of limitation. He further submits that the permanent residential address of the respondent in several documents is reflected as the house in question. In fact, specific portion has been occupied by the family of the respondent wherein they also have kept their articles under lock and key.

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that petitioner No.1- Harbir Singh Gill has since passed away. The issue of establishing share in the house arose soon after the death of Dilbag Singh as the respondent had filed a representation dated 01.10.1996(Annexure P-3) before the Estate Officer, Chandigarh expressing his grievance with respect to will dated 09.09.1996, as it bequeathed the house onto petitioner No.3 and Dhanpreet Kaur only. Subsequently, claims and counter-claims were examined by the Estate Officer and the property in question was transferred to the beneficiaries, as stipulated by the will dated 09.09.1996. Further still, the civil suit filed by the respondent was dismissed vide judgment dated 30.09.2016 (Annexure P-17) passed by the learned Additional Civil Judge (Senior Division), Chandigarh as was the appeal preferred by him against the same, vide judgment dated 12.12.2024 passed by the learned Additional District Judge, Chandigarh.

8. The petitioners have been summoned to face trial for offences punishable under Section 447, 457, 341 of the IPC vide impugned summoning order dated 05.01.2011 (Annexure P-2) in the complaint (supra). The entire case of the respondent is based upon the allegation that the petitioners have trespassed into his share of the house in question. Criminal trespass is defined under Section 441 of the IPC, which reads as under:

Section 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".

9. Time and again, this Court has reiterated that co-sharers in a disputed property cannot be said to have committed theft or criminal trespass. It has been clearly established that as per the wishes of deceased Dilbag Singh, as reflected by his last registered will dated 09.09.1996, the house in question belongs to petitioner No.3 and Dhanpreet Kaur, who are residing there along with their families. As such, the petitioners cannot be held liable for any of the offences mentioned in the summoning order as each co-owned has the right to enjoy the property they own.. Reliance in this regard can be placed on the judgments of this Court in ***Bhartu vs. Ram Sarup (supra)***, ***Gurmeet Singh vs. Rachhpal Singh 2004(2) R.C.R.(Criminal) 72*** and ***Karamjit Kaur vs. State of Punjab 2014(7) R.C.R. (Criminal) 1201***.

10. It appears that a predominantly civil dispute is given criminal contours to provide expeditious mechanism to pressurize the other party into a settlement or bend to their will. The misuse of criminal law machinery for settling civil disputes has become menacingly prevalent. The misuse of legal machinery to launch malicious and oppressive prosecution by converting a purely civil dispute into a criminal offence has been deprecated by the Courts and the constitutional Courts have come to the rescue of the victimized and harassed citizens entangled in undue criminal proceedings for purely civil disputes. A two Judge bench of the Hon'ble Supreme Court in ***Kunti and***



Another vs. State of U.P. Criminal Appeal No. 1380 of 2023 decided on

03.05.2023, speaking through Justice Sanjay Karol, observed as follows:

“9. However, we do not find the need to engage with the grounds as urged, because a perusal of the record in no uncertain terms reflects the dispute as being of a civil nature. This court recently, in Sarabjit Kaur vs. State of Punjab and anr., observed that “A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.”

10. A two judge bench of this Court in ARCI v. Nimra Cerglass Technics (P)Ltd., while deliberating upon the difference between mere breach of contract and the offence of cheating, observed that the distinction depends upon the intention of the accused at the time of the alleged incident. If dishonest intention on part of the accused can be established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

11. In Vijay Kumar Ghai v. State of W.B (2022) 7 SCC 124, one of us, (Krishna Murari J.,) observed in reference to earlier decisions as under:

“24. This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. The Court further observed that: (Indian Oil Corpn. Case [Indian Oil Corpn. V. NEPC India Ltd. (2006) 6 SCC 736 : (2006) 3 SCC(Cri) 188] SCC p.749 para 13)

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

12. Having regard to the above well established principles and also noting that the present dispute is entirely with respect to property and more particularly buying and selling thereof, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue.”

11. Finally, a two Judge Bench of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal**, 1992 AIR SC 604, speaking through Justice S.

Ratnavel Pandian, opined as follows:



"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section [482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155](#)(2) of the Code.
5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously



instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." (emphasis added)

12. In view of the discussion above, both the present petitions are allowed and Criminal Complaint No.22833 of 2010 dated 30.07.2010(Annexure P-1) titled as 'Kulbir Singh Gill Vs. Harbir Singh Gill and others', summoning order dated 05.01.2011 (Annexure P-2) passed by the learned Additional Chief Judicial Magistrate, Chandigarh against petitioners under Sections 447/457/341 of IPC and all consequential proceedings arising therefrom are quashed qua the petitioners.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.
14. A photo copy of this judgment be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

21.01.2025
Neha

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