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**(2010) 05 P&H CK 0050**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. M-11503 of 2009 (O and M)

Indu Patharia and Others

APPELLANT

Vs

Rakesh Kumar

RESPONDENT

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**Date of Decision:** May 4, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 482
- Penal Code, 1860 (IPC) - Section 363, 366, 376, 427, 447

**Hon'ble Judges:** Gurdev Singh, J

**Bench:** Single Bench

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**Judgement**

Gurdev Singh, J.

Petitioners, Indu Patharia, Ajayvir Patharia, Ashutosh Patharia, Dharamvir Chopra, Bhavay Chopra, Ram Gopal and Seema, have filed this petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code"), for quashing Complaint No. 199/08 dated 23.5.2008 (Annexure P/1) filed against them by Rakesh Kumar, Respondent/complainant and the summoning order dated 13.2.2009 passed by the Additional Chief Judicial Magistrate, Sonapat.

2. It has been pleaded in the petition that Petitioners No. 1 and 2 are husband and wife, Petitioner No. 3 is their son, Petitioner No. 4 is their son-in-law, Petitioner No. 6 is their next door neighbour and Petitioner No. 7 is their daughter. Petitioners No. 1 to 3 are senior citizens. Respondent is the neighbour of Petitioners No. 1 and 2 and there was a common boundary wall between their houses. Being a property dealer, the Respondent has developed close ties with musclemen, social outcastes and his elder brother is practicing Advocate in the District Courts at Sonapat and handling his unfinished business. Petitioners No. 1 and 2 purchased this house in the year 1985 from one Surender Kumar Arora, who had obtained the same from his father by virtue of the decree dated 15.4.1985. The Respondent had an eye on 26 sq. yards piece of their plot situated on the western side and had encroached upon that part of the plot on 9.3.2008, after demolishing the common boundary wall. They tried to

reason with the Respondent by showing their title deed and the site plan but all in vain. When the peaceful method to resolve the dispute failed, Petitioner No. 2 got FIR registered against the Respondent under Sections 447, 427 and 506 IPC at Police Station Civil Lines, Sonapat. The police inspected the place of occurrence and took the photographs. The Respondent got enraged on account of the registration of the FIR and started hurling abuses and throwing brickbats at their house. Fearing for their safety, they moved applications to various authorities for permission to erect a new wall in place of the demolished wall and for providing police protection for doing so. One such application was moved before the Deputy Commissioner, Sonapat, which was forwarded to Superintendent of Police for appropriate action. They got their boundary wall re-constructed under police protection on 13.4.2008. The complainant realizing that things were slipping out of his hands, filed the above said false, frivolous and vexatious complaint against all of them, in which they were summoned by the Additional Chief Judicial Magistrate, Sonapat, for the offences under Sections 427, 448, 506/149 IPC, vide order dated 13.2.2009. The dispute is of civil nature which has been given a criminal flavour, in order to pressurize Petitioner No. 1 to accept the demands of the Respondent. A civil suit based on the same set of facts is already pending between them in which status quo order has been passed. Even if the averments made in the complaint are taken to be true on its face value, no offence is made out against them. This complaint is a counter-blast to the said FIR, which was filed after two months of the registration of that FIR and about 40 days of the alleged occurrence. Conscious efforts have been made to rope in each and every family members of Petitioner No. 1 and even the neighbour has not been spared. All this depicts, the malafide of the Respondent. Petitioners No. 1 to 3 are not physically capable of doing the acts which have been attributed to them.

3. On notice of motion having been issued, the Respondent appeared and submitted his reply. He contended therein that the total area of the plot No. 94-R and 94-L is 665 sq. yards, but Surender Kumar Arora and his father sold 700 sq. yards to Petitioners No. 1 and 2 and one Jugal Kishore Juneja, though at the spot only 665 sq. yards of land was available, which was allotted by the Custodian Department to the original owner Lakshman Dass. There was dry toilet measuring 6'6" x 5' x 6' on the western boundary of his house, adjacent to the boundary of Petitioners No. 1 and 2 and the rest of the boundary was secured by barbed iron wire. The Petitioners tried to forcibly occupy 25 sq. yards of the land from his house/plot by demolishing their pacca latrine and removing the barbed iron wire fencing. It was in respect of that act of the Petitioners that he filed the complaint in which correct facts have been given. Petitioner No. 1 by using his resources and by way of undue influence got registered FIR dated 17.3.2008. Under the garb of that FIR, all the Petitioners used their influence over the police and local authorities to construct a wall inside the

4 area of his house/plot and thereby managed to encroach upon 25 sq. yards of his land. He was constrained to file a suit for possession and permanent injunction in respect of that act of the Petitioner, which is pending in the Court of Civil Judge

(Junior Division), Sonapat. The complaint filed by him discloses commission of various offences by the Petitioner. Though civil suit has also been filed yet the civil and criminal proceedings can go side by side.

5. I have heard learned Counsel for both the sides.

6. It has been submitted by learned Counsel for the Petitioners that the complaint has been filed by the Respondent as a counter-blast to the FIR which had already been got registered by Petitioner No. 1 against the Respondent. The occurrence mentioned in the FIR took place on 9.3.2008 and the FIR was got registered on 17.3.2008. The complaint has been filed regarding the alleged incident of 13.4.2008 on 25.5.2008 i.e. after expiry of one month and 10 days. That shows malafide on the part of the Respondent. This complaint is a result of malice and to wreck vengeance. The photographs were taken during the investigation by the police, from which it is clear that there was no such latrine or barbed wire fencing in existence. That itself shows the falsity in the contentions made in the complaint. There was only intervening boundary wall which was demolished by the Respondent and got constructed by the Petitioner No. 1 after obtaining protection from the police. No offence is made out from the contents of the complaint. Therefore, this complaint and the summoning order are liable to be quashed.

7. On the other hand, it was submitted by learned Counsel for the Respondent that from the documents placed on the record, it is very much clear that there was one room, which was being used as latrine, on the boundary line of the houses of the Respondent and Petitioner No. 1. There was no such common boundary wall. There was only barbed wire fencing. The latrine was demolished and the barbed wire was removed by the Petitioners, who criminally trespassed into the property of the Respondent and committed the offence of criminal intimidation by extending threats. There is no ground for concluding that this complaint was filed as a counter-blast to the FIR, got registered by the Petitioners and that it is a result of any such malice.

8. For proper appreciation of the matter, relevant portion of the complaint is re-produced below:

4. That when the bail application for the grant of anticipatory bail was pending in the court of Id. Addl. Sessions Judge, Sonapat on 13.4.2008 being Sunday, the complainant was present in his residential house and Jai Bhagwan s/o Anup Singh resident of village Tharu and Rajinder Singh s/o Sh. Jivan Singh resident of Sonapat has come to his house in connection with business dealings. At about 10 am, all the accused No. 1 to 7; namely, Indu Patharia and Seema armed with dandas, Dharambir and his son Bhavay Chopra armed with iron rods and other accused namely Ajayvir Phataria, Ashutosh and Ram Gopal armed with lathies and being members of unlawful assembly with common object of taking forcible possession and committing mischief and offences of criminal intimidation and other related

offences, having made preparation to cause hurt, entered the residential house of the

6 complainant without his permission with 5-6 armed unknown musclemen and started removing the iron bared wire of the vacant site shown in the site plan with letters "EFGH". On hearing their noise, the complainant along with witnesses came towards the vacant side of his house and asked them to desist from removing the barbed wire and they were also asked to leave the vacant side of the house as they were committing offences, but all the requests of the complainant were unheard. The entire barbed wires were removed and they forcibly demolished the dry pucca latrine existing on the western boundary line of the house of the complainant and they have put wrongful loss to the complainant of Rs. 3300/-by way of demolition of the latrine and hurriedly took forcible possession of the vacant site. When the complainant and his witnesses requested them again and again not to indulge in such type of heinous crime, all the accused hurled in filthy abuses in the name of mothers and sisters and criminally intimidated the complainant and members of the house that they would be put to death if the complainant party would put up any type of obstruction or hurdle. Feeling perplexed and alarmed at the threats held out by the accused, the complainant felt highly mentally hurt and the accused continued committing illegal acts and they also started raising construction on the vacant site with the material already collected in their house with the help of unknown masons. After composing himself, the complainant went to the civil lines police station and requested the SHO to apprehend the accused named above as they were committing the offence of criminal trespass and other offences by forming an unlawful assembly and the SHO after repeated request accompanied the complainant to his house. At that time also the accused were committing offences but the SHO expressed his helplessness by saying that on the application of accused No. 1, S.P. Sonapat has ordered him to assist the accused party in taking forcible possession and construction of shed and the SHO after staying for a few minutes left the spot and advised the complainant to resort to legal remedy of court and the police would not register a criminal case against the accused. In this way, the accused succeeded in taking forcible possession of the site marked by letters "EFGH", demolishing the latrine and roughly hurriedly constructing the shed with mud mortar within 2-3 hours. The offence was witnessed by aforesaid Jai Bhagwan and Rajinder Singh besides the complainant. The accused have illegally encroached upon an area measuring 26.61 sq. yards of the vacant site plan mentioned above.

9. This Court has not been able to appreciate the arguments of learned Counsel for the Petitioners that no offence is made out from the contents of this FIR. It is well settled that, while exercising jurisdiction u/s 482 of the Code, for quashing the complaint, the Court is to take the contents of the complaint on its face value. From the perusal of the FIR, without any assistance from any other source, it is to be found if any offence is made out or not. The portion of the complaint, which has been re-produced above, clearly shows that the offences of criminal trespass,

mischievous, theft and criminal intimidation are made out.

10. As per the principles laid down in *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1991 (1) RCR 383, a complaint can also be quashed, if it is proved on the record that the same has been filed with a mala fide and vexatious intention and in order to wreck vengeance. It is also well settled proposition of law that disputed questions of facts cannot be gone into while deciding such a petition. The following principles were laid down in *Bhajan Lal's* case (supra).

11. 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.

12. Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officer u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

13. 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.

14. Where the allegations in the FIR 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 u/s 155(2) of the Code.

15. Where the allegations made in the FIR 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.

16. 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.

17. 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."

18. Learned Counsel for the Petitioners has referred to the FIR, which was got lodged by Petitioner No. 1 against Respondent. That FIR was got registered on 17.3.2008. It is mentioned in that FIR that on 9.3.2008, the Respondent demolished the common wall and intended to encroach upon 11 feet on the land of Petitioner No. 1. On 17.3.2008, the Petitioner No. 1 tried to convince him and even showed the registered documents of his house but he was not convinced. On the contrary, the

Respondent threatened them that in case they tried to touch the wall or tried to reconstruct the wall, he would kill them. Learned Counsel for the Petitioners has also tried to draw the attention of this Court towards the letter dated 28.3.2008 (Annexure P/6) which was written to the Deputy Commissioner, Sonapat. In that letter, reference is made of the incident, which took place on 9.3.2008. In that letter, which was written by Petitioner No. 2, she came out with a new story. She stated that on 9.3.2008, Petitioners No. 1 and 3 were beaten by the Respondent and his associates, when they tried to stop them from demolishing the boundary wall. There is nothing on the record to conclude that the complaint in question has been filed as a counter-blast to the FIR.

19. The Respondent has filed copy of the sanctioned building plan with his reply. A perusal thereof shows that a room for the latrine existed by the side of the boundary in between his house and the adjoining house. It is a disputed question of fact as to whether there was boundary wall or only a barbed wire fencing. On the basis of the preliminary evidence produced by the Respondent in the complaint, the Magistrate has already formed the opinion that there are sufficient grounds for issuing the process against the Petitioner. In *Maninder Kaur v. Rajinder Singh* 1992 (3) RCR 672, the position was similar. A criminal complaint was filed under Sections 363, 366 and 376 IPC on the basis of the statement of the complainant and two witnesses examined in the Court. The Magistrate came to the conclusion that there was sufficient ground for issuing the process against the accused. It was held by the Hon'ble Supreme Court that the High Court was not justified in quashing the proceedings at the initial stage to strangle it at its inception. It cannot be gathered from the circumstances, that the complaint has been filed as a result of any malice or malafide intention on the part of the Respondent. There is no ground for quashing the same.