
(2003) 05 P&H CK 0074

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 19697-M of 2002

Gurnam Singh and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 8, 2003

Citation: (2005) 1 RCR(Criminal) 37

Hon'ble Judges: Nirmal Singh, J

Advocate: Shri S.S. Dinarpur, Advocate. Shri K.S. Chauhan, D.A.G., Haryana., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. This is a petition under Section 482 Cr.P.C. for setting aside the criminal complaint dated 22.12.1999 Annexure P5 including summoning order Annexure P6 and all the subsequent proceedings.

2. Brief facts for the disposal of this petition are that the petitioners are real brothers and they are owners in possession of the land comprised in khewat/khatauni No. 39/64, khasra Nos. 10/14, 17/1, 17/2, 74, 213, 55 measuring 15 K 2 M plus the land comprised in Khewat/Khatauni No. 51/83, Khasra No. 10//7 (74) total measuring 22 K6 M situated in the revenue estate of village Chhoti Rasour, H.B. No. 94, Tehsil Naraingarh, Distt. Ambala. It is further the case of the petitioners that the petitioners filed civil suit No. 657CS of 1996 seeking decree for permanent injunction restraining the respondents from cutting and removing the eucalyptus trees from the land in dispute. The suit was decreed by the learned Civil Judge (JD), Ambala on 31.3.1998. Copy of the judgment has been placed on record as Annexure P1. The respondent filed an appeal against the said judgment and decree before the learned District Judge, Ambala who also dismissed the appeal filed by the respondent. The respondent filed RSA No. 3322 of 1999 in the High Court of Punjab and Haryana which was also dismissed vide order dated 26.9.2001. Thereafter the Divisional Forest Officer, Ambala City filed complaint against the petitioners under Sections 32/33 of the Indian Forest Act in the Court of Presiding Officer, Special

Environment Court, Hissar who in pursuance of the complaint passed the summoning order dated 22.12.1999 against the petitioners. The petitioners filed this petition on the ground that the complaint is not maintainable. The respondent has lost this case upto the High Court. It was further pleaded that neither the department could prove the land in dispute nor they could prove the plantation of trees by them.

3. On appearance, the respondent filed reply and admitted that the District Judge has dismissed the appeal vide order dated 13.1.1998. It was also admitted that the Regular Second Appeal filed in the High Court was also dismissed. However, it was pleaded that the case is pending in the Environment Court, Kurukshetra. The defendant did not give any type of notice to the plaintiff after the decision of the High Court dated 26.9.2001. It was also admitted that the petitioners are resident of village Chhoti Rasour, Tehsil Naraingarh, District Ambala. However, it was pleaded that the trees were planted by the respondent and are in the possession of the forest department and the petitioners should seek the release of the trees from the forest department.

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

5. The Apex Court in State of Haryana and others v. Ch. Bhajan Lal and others, 1991(1) RCR(CrL) 383 (SC) : AIR 1992 SC 604 has laid down guidelines where High Court can exercise inherent powers under Section 482 Cr.P.C. to prevent the abuse of process of law. However, this should be done sparingly and in rarest of rare cases. The guidelines are as under :

"(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 FIR 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 FIR do not constitute a cognizable offence but constitute only a noncognizable 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 allegation 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.

(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.

6. In *Waryam Singh and another v. Amarnath and another*, AIR 1954 SC 215, it has been held that the High Court has not only the administrative superintendence over the subordinate courts and the tribunal but it has also the powers of judicial superintendence. In *Pepsi Foods Limited and another v. Special Judicial Magistrate and others*, 1997(4) RCR(CrL.) 761 (SC) : 1998(5) SCC 749 their Lordships have laid down the scope of quashing the complaint and summoning order by observing as under :

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

8. In view of the above guidelines, the High Court while exercising the powers under Section 482 Cr.P.C. can quash the FIR or the complaint but this power is to be used sparingly in rarest of rare cases, when on the face of it, from the FIR, no cognizable offence is made out and the order passed by the magistrate is perverse, illegal or manifest and in that eventuality, there is no bar that the High Court cannot interfere to prevent the abuse of the process of law and to secure the ends of justice.

9. In the present case, the petitioners have filed a suit for permanent injunction on the averments that they are owner in possession of land comprising in Khewat and Khatauni No. 39/64, Khasra No. 10 measuring 15 kanal 2 marlas plus the land comprised in khewat/khatauni No. 51/83, Khasra No. 10//7(74) measuring 22 kanal 6

marlas. The suit filed by the petitioners was decreed and it was held that the petitioners are owners in possession of the land in dispute and the respondent has no right, title or interest in the trees planted in the above said land. The respondent filed an appeal before the District Judge, Ambala and the same was also dismissed vide order dated 13.1.1998. The Regular Second Appeal No. 3322 of 1999 has also been dismissed vide Annexure P3, so the judgment and decree passed by the Civil Court has become final. As per the judgment and decree, the respondent has no right title or interest in the trees planted in the land in dispute. The findings recorded by the Civil Court are binding upon the criminal court. When the petitioners are owners and in possession of the land in dispute and it has also been established that the petitioners have planted the trees in the land in dispute then the complaint filed by the respondent Forest Officer is not maintainable. So, continuance of the proceedings in the complaint will tantamount to abuse of the process of the law and will be great injustice to the petitioners.

For the reasons mentioned above, the petition is accepted and the complaint and the subsequent proceedings are quashed.