

(2011) 05 P&H CK 0191

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-33150 of 2009

Sadhu Singh and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: May 5, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 148, 149, 427, 446, 447

Citation: (2011) 3 RCR(Criminal) 263

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Nirmaljit Kaur, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of the order dated 13.10.2009 (Annexure P-9) passed by the Additional Sessions Judge, Jalandhar.

2. The facts, in short, are that the FIR No. 543 dated 12.11.2006 under Sections 447, 446, 511, 506, 427, 148 and 149 IPC at Police Station Sadar, District Jalandhar was lodged against the present petitioners. The Additional Chief Judicial Magistrate, Jalandhar, on finding that there is no prima facie evidence against the petitioners, discharged them vide order and judgment dated 08.04.2009. Aggrieved, the respondent No. 2 preferred a revision petition. The Additional Sessions Judge, Jalandhar vide his order dated 13.10.2009 accepted the revision petition and set aside the order dated 08.04.2009 and also remanded the matter back to the trial Court for proceeding afresh against the petitioners.

3. The complainant i.e. respondent No. 2, in the present FIR, is the nephew of petitioner No. 1. The mother of respondent No. 2, late Smt. Pritam Kaur, executed a Will in favour of her brother i.e. petitioner No. 1 and her other son, Gurdev Singh,

petitioner No. 3 to the exclusion of the complainant- respondent No. 2. Respondent No. 2, namely, Mohinder Singh was not having good relations with her mother Pritam Kaur, and therefore, in her Will, she had specifically kept him away from her entire property and instead gave = of her property to her brother-petitioner No. 1 and = to her son.

4. Aggrieved the respondent No. 2 has filed the present FIR against the petitioners. The allegation in the FIR is that the petitioners along with 28/30 other persons came in two Tata jeeps/Motor Cycles and Scooters etc. and were armed with deadly weapons and after raising lalkara that if anybody dared to come forward to prevent them from taking possession of land in Village Bhode Saprai, he would be killed. Thereafter, they illegally and forcibly entered into the land which was under occupation of the applicant and was owned by his mother. Thereafter, they occupied the land and forcibly ploughed the land in which Bajra/churrey was sown of Village Bhodey Saprai.

5. While praying for quashing of the FIR, learned counsel for the petitioners contended that the petitioners are cultivating the land ever since the death of Makhan Singh, the late husband of Pritam Kaur. Pritam Kaur had sold 10 kanals of land to the sons of petitioner No. 1 i.e. Mohan Singh and Sohan Singh vide a registered Sale Deed dated 08.12.2005. The remaining 11 kanals of the land was being jointly cultivated by Sadhu Singh and Gurdev Singh. Thus, the land is already in the Occupation of the petitioners. Moreover, on the basis of the Will (Annexure P-2), as well as, the Registered Sale Deed (Annexure P-3), the mutation of the land has already been sanctioned in favour of the petitioners. The appeal and revision preferred by the complainant- Mohinder Singh against the sanction of the mutations in favour of the petitioners also stand dismissed. Further, as per the enquiries conducted by Superintendent of Police, City-2, Jalandhar and the Deputy Superintendent of Police, Urban- II, Jalandhar dated 07.06.2007 and 18.08.2008, the allegations levelled by respondent No. 2 are baseless and are not substantiated. The FIR is, therefore, an abuse of process of law.

6. While opposing the petition, learned counsel for respondent No. 2 submitted that the petitioners were guilty for forcibly occupying and ploughing the land which was in possession of the respondent. At the time of framing of charge, only prima facie case has to be seen and the allegations in the FIR are sufficient to summon the petitioners and that no opportunity was given to the respondent-complainant to rebut the presumption and that the trial Court did not record any observation qua the offence u/s 506 IPC while discharging the petitioners. It is further contended that the respondent- complainant was in exclusive possession of the disputed land and therefore, he could not have been dispossessed without following the due process of law and relied on the judgment rendered in the case of State of Madhya Pradesh v. Mohan Lal Soni reported as 2000(3) RCR (cri) 452 to argue that only a prima facie case has to be seen at the time of framing of charge.

7. Heard.

8. From the arguments, pleadings and the written statement filed by the parties, the following facts emerge;

(i) Pritam Kaur executed a Will qua 10 kanals of land in favour of her brother Sadhu Singh-petitioner No. 1 and her other son Gurdev Singh-petitioner No. 3. The respondent No. 2/complainant-Mohinder Singh was her second son. She excluded him from the said, Will.

(ii) Pritam Kaur transferred the land owned by her in the name of her brother-petitioner No. 1 and her second son petitioner No. 2. The remaining 11 kanals of land owned by Pritam Kaur was sold to Mohan Singh and Sohan Singh, sons of her brother.

(iii) On the basis of the Will and the Registered Sale deed, the mutation, too, was sanctioned in favour of the petitioners.

(iv) The complainant-Mohinder Singh filed an appeal against the said order of mutation. The same was dismissed vide order dated 29.11.2006 passed by the Additional Deputy Commissioner-cum-Collector, Jalandhar and has been placed on record as Annexure P-5.

(v) Aggrieved, the complainant filed revision against the said order. The said revision, too, was dismissed on 31.03.2008 by the Commissioner, Jalandhar Division and has been placed on record as Annexure P- 4.

9. The respondent No. 2/complainant had never challenged either the sale deed or the Will, in question, whereas, the mutation sanctioned in favour of the petitioners stand dismissed and the same has also become final.

10. Learned counsel for respondent No. 2/complainant has not even been able to show as to how he was in exclusive possession of the said land. Even as per the jamabandi (Annexure P-10), Gurdev Singh, Mohinder Singh and Pritam Kaur widow of Makhan Singh are shown to be the owners in possession of land even before the registration of the FIR. Thus, in case, the petitioners are in possession, the offence, as alleged, cannot be said to have been committed.

11. Even otherwise, the respondent No. 2/complainant, on the other hand, has not been able to show even one document to prove that he is in exclusive possession. In fact, even as per the enquiries conducted by Superintendent of Police, City-2, Jalandhar and Deputy Superintendent of Police, Urban-II, Jalandhar, the allegations were found to be baseless. In fact, the trial Court while discharging the petitioners, had specifically held that the complainant had failed to show that he was in exclusive possession of the said land. The Additional Sessions Judge, Jalandhar admitted that the presumption of truthfulness is attached with the copy of jamabandi. In fact, the Additional Sessions Judge, Jalandhar, while setting aside the

order of the trial Court held that if the co-sharer is in exclusive possession, he can protect his possession by way of injunction. The said objection rather goes against the respondent-complainant. The respondent/complainant, who is claiming exclusive possession, has not filed any suit of permanent injunction till date. As such, there is nothing to show that respondent No. 2 is in exclusive possession.

12. This Court in the case of Gurmeet Singh v. Rachhpal Singh reported as 2004(2) RCR(cri) 72 : 2004(2) Cri. C.C. 728, while relying on the judgment of Hon"ble the Apex Court in the case of Bhartu v. Ram Sarup reported as 1981 P.L.J. 204, held that in case, the petitioners are co-sharer in the property in dispute, they have committed no offence of theft and trespass -

9. A perusal of Annexure P-6 which is a copy of the Khasra Girdawari for the year 1998 shows "selfcultivation of the co-sharer i.e. Manjit Singh, Jagdish Singh, Bank Kaur, Baljit Kaur and Kuldip Kaur." Therefore, Bant Kaur, Kuldip Kaur and Baljit Kaur have not been shown in possession of any specific khasra number. When the land is joint then every co-sharer has an interest in every inch of land as has been laid down by the Full Bench of this Court in Bhartu v. Ram Sarup, 1981 P.L.J. 204 and in [Kochkunju Nair Vs. Koshy Alexander and Others](#), the Apex Court has held as follows:

That all co-owners have equal rights and coordinate interest in the property though their shares may-be either fixed or indeterminate. Every co- owner has a right to enjoyment and possession equal to that of the other co- owners. Each co-owner has in theory interest in every infinitesimal portion of the subject-matter and each has the right irrespective of the quantity of his interest to be in possession of every part and parcel of the property jointly with others.

13. The petitioners being owners as co-sharers in possession, no offence is made out against them and the prosecution is nothing but malicious and motivated.

14, As per the judgment of Hon"ble the Apex Court rendered in the case of [Anna Transport Corporation Ltd., Salem Vs. Safe Service Ltd. and others](#), , the case of the petitioners falls under categories 2 and 7 of the list of cases laid down as guidelines, where, the High Court can exercise inherent powers u/s 482 Cr.P.C which reads thus :-

(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 u/s 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 u/s 155(2) of the Code.

(5) 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.

(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."

15. The facts narrated above clearly show that the present prosecution is maliciously instituted to grab the property in this manner as the respondent No. 2/complainant was angry and upset with his mother who had Willed the property to her brother and her son to the exclusion of respondent/complainant and sold the remaining land to the sons of her brother rather than the respondent/complainant. Moreover, the petitioners are co-sharer in the property and were already in possession of the land prior to the registration of the FIR. Thus, no offence, as alleged in the FIR, is made out against the petitioners. The said FIR is nothing but an abuse of process of law.

16. In view of the above facts and discussion, the present petition is allowed and the order dated 13.10.2009 (Annexure P-9) passed by the Additional Sessions Judge, Jalandhar is hereby quashed.