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**(2008) 07 P&H CK 0136**

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

**Case No:** Criminal Miscellaneous No. 16720-M

Jaibir and others

APPELLANT

Vs

State of Haryana and another

RESPONDENT

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**Date of Decision:** July 9, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 190
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)

**Citation:** (2009) 4 RCR(Criminal) 627

**Hon'ble Judges:** Rajesh Bindal, J

**Bench:** Single Bench

**Advocate:** S.K. Verma, for the Appellant; Ajay Ghengas, D.A.G., Haryana, for the Respondent

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**Judgement**

Rajesh Bindal, J.

This order will dispose of a bunch of petitions bearing Criminal Misc. Nos. 16720-M, 16722-M and 39649-M of 2006. However, the facts have been noticed from Criminal Misc. No. 16720-M of 2006.

2. Prayer in the petition is for quashing of complaint no. 59/17-12- 2005 dated 8.10.2005, u/s 190 Cr.P.C. read with Section 3(1)(iv) & (v) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Annexure P1), and the summoning order dated 17.12.2005 (Annexure P2).

3. Learned counsel for the petitioners submitted that filing of criminal complaint by respondent No. 2/complainant against the petitioners is nothing else but abuse of process of law, if the facts and circumstances of the case in hand are considered. The father of the petitioners inherited 90 acres of land on 10.6.1954, a part of which was declared surplus in 1961. As the same was not utilised, on an application filed by the petitioners, vide order dated 15.7.1978 (Annexure P3) passed by the

Sub-Divisional Officer (C) & Prescribed Authority, Rohtak, under the Haryana Ceiling and Land Holdings Act, 1972 (for short, "the Act"), it was directed that the land in question be not utilized to rehabilitate the Chatter under the Scheme 1976 of the Act. The order passed by the learned Sub-Divisional Officer (C) was challenged by respondent no. 2/complainant before the Commissioner, Rohtak Division, Rohtak, whereby the same was upheld vide order dated 22.12.2004 (Annexure P4), for the simple reason that the revision had been filed after 26 years of the passing of the impugned order dated 15.7.1978. Thereafter, respondent no. 2/ complainant filed civil suit on 16.4.2005 challenging the order dated 15.7.1978 of Sub- Divisional Officer (C) and order dated 22.12.2004 of Commissioner, Rohtak Division, Rohtak, respectively. It was, thereafter, that the present complaint was filed on 8.10.2005, when the civil litigation between the parties was already pending. The allegations in the complaint are that a part of the land out of surplus area of Village Farmana Khas was allotted to respondent no. 2- complainant on 14.11.1977 for a consideration. The first instalment was deposited on 21.8.1978 and the possession was given on 20.6.1985. It was further alleged that the petitioners were in wrongful possession of the land which had already been allotted to respondent no. 2/complainant and they were not allowing the complainant to derive the benefits thereon.

4. In the aforesaid factual matrix, learned counsel for the petitioners submitted that the complaint has been filed against the petitioners with the false and concocted allegations as is established from the uncontroverted material on record. The civil litigation for the land allegedly allotted to respondent no. 2/complainant was already pending when the complaint was filed. The prayer is for the quashing of the complaint.

5. Learned counsel for the State submitted that there is no bar to the continuation of civil as well as criminal litigation together. The fact regarding pendency of civil litigation otherwise is not in dispute.

6. After hearing learned counsel for the parties, I find merit in the contention of learned counsel for the petitioners. A perusal of the complaint shows that the land in question was allegedly allotted to respondent no. 2/ complainant on 14.11.1977. The first instalment thereof was deposited on 21.8.1978 and thereafter the possession was delivered nearly about 7 years thereafter on 20.6.1985. As is pleaded by the petitioners, prior thereto vide order dated 15.7.1978 a big chunk of land including land in dispute in the present petition was directed not to be utilised to rehabilitate the Chatter under the Scheme 1976 of the Act. It was recorded in the order dated 15.7.1978 that the land in dispute had not been utilized till date and it was on that basis that the impugned order was passed. How respondent no. 2/ complainant came in possession in 1985, is not borne out from the record and why there was so much delay in delivering the possession to him, the complaint is silent about it.

7. Still further the complainant also did not disclose the details about payments of any further instalment after payment of first instalment on 21.8.1978 after the passing of the order by the Sub-Divisional Officer (C) on 15.7.1978. In the complaint the statement was that the petitioners were wrongfully and illegally occupying the land allotted to respondent no. 2- complainant, whereas in the statement before the court he submitted that Petitioners have illegally and forcibly taken the possession of the land. Once the land in dispute was out of surplus pool, vide order dated 15.7.1978 passed by the Sub-Divisional Officer (C) as the same had not been utilized till that date, there was no question of delivery of possession to respondent No. 2/complainant as alleged by him in 1985. In the civil suit filed by him, he is yet to establish his right.

8. For the reasons mentioned above, in my considered opinion, continuance of proceedings in the complaint filed by respondent no. 2/complainant would amount to abuse of process of law and accordingly the same deserves to be quashed.

9. Accordingly, the impugned complaint dated 8.10.2005 and all subsequent proceedings arising thereto are quashed.

10. The petitions are disposed of order accordingly.