

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-19777-2023 (O&M)

Date of decision : 24.01.2025

Gurmail Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. S. Sandhu, Advocate
for the petitioner.

Ms. Swati Batra, Deputy Advocate General, Punjab.

Mr. Ishan Gupta, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition, under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*), has been filed for quashing of FIR No. 125 dated 20.11.2022, registered under Sections 427 and 447 read with Section 511 of the IPC at Police Station Sandaur, District Malerkotla and the proceedings having emanated therefrom.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a complaint filed by respondent No. 2-Bahadar Singh on the allegations that Samreen Kaur and Ivleen Kaur, who are his granddaughters and residing in Canada, were co-owners of 04 acres of land situated in the revenue estate of village Faujewal. The *girdawari* entries of this land were in the names of his granddaughters and previously it was leased out to one Manjeet Singh, who had vacated the same after reaping the paddy crops. The complainant had to



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lease out this land further. Stubble of the paddy crop was standing in the above said land, which was to be used by the complainant. On 20.11.2022, the petitioner/accused along with 3-4 unknown persons destroyed the stubble by putting fire and tried to encroach upon the above said land. After registration of the FIR, investigation proceedings were initiated. The presence of the petitioner was secured. He was released on bail. After completion of necessary investigation and usual formalities, *challan* under Sections 427 and 447 read with Section 511 of IPC was presented as against the petitioner.

3. It is argued by learned counsel for the petitioner that the impugned FIR and the proceedings having emanated therefrom including the *challan* report, are liable to be quashed since he has been falsely implicated in this case. In fact there was matrimonial discord between his son Varinder Singh and daughter-in-law Paramjeet Kaur and they had parted ways. He is paternal grandfather of Samreen Kaur and Ivleen Kaur, whereas respondent No. 2/complainant is not their real grandfather. Rather, he is uncle of Paramjeet Kaur. The property in question was owned by his son Varinder Singh to the extent of $\frac{1}{4}$ share. He had transferred the same in favour of the petitioner and his wife. His granddaughters had challenged the transfer by filing a civil suit, which has been decreed in their favour. An appeal filed against the said judgment and decree is pending. The petitioner had filed a revision petition, bearing **CR-3828-2018**, before this Court against the interim order, passed by the learned first appellate Court, and *status quo* regarding possession of the above said land has been ordered to be maintained. In fact, it was the complainant, who had tried to take forcible possession of the land in question, after passing of the impugned order and an FIR bearing No. 45 dated



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05.06.2018 had been lodged under Sections 148, 149, 379, 447 and 511 of IPC against respondent No. 2 at Police Station Sandaur. Respondent No.2, by forcibly entering into the land in question, had ploughed the same as on 20.11.2022 and a contempt petition filed against him is also pending. Even otherwise, the petitioner is the joint co-owner in possession of the land in question. The ingredients for commission of offences punishable under Section 427 and 447 of IPC have not been at all attracted in this case, as there are vague allegations in the FIR. No description of the property which was allegedly tried to be encroached upon by the petitioner has been mentioned in the FIR. The criminal proceedings have been initiated only to abuse the process of law. He has further argued that even otherwise, the allegations, even if taken on the face of record to be correct, do not make out any case for trial of the petitioner for commission of offences, for which, he has been booked and challaned. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned FIR along with all the subsequent proceedings is liable to be quashed.

4. Status report has been filed by the respondent-State. It is submitted therein and learned Deputy Advocate General, Punjab, assisted by learned counsel for respondent No.2/complainant, has argued that the investigation was conducted on the allegations in the FIR and a *prima facie* for commission of aforementioned offences has been made out against the petitioner. Investigation stands concluded. There is no exceptional or sparing circumstance to quash the impugned FIR. It is further submitted that in view of specific allegations against the petitioner in the FIR as well as in the chargesheet, it is not a case to quash the proceedings at this stage. The



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petitioner can prove his innocence in trial. The land in question was in possession of the minor daughters of Paramjeet Kaur and the petitioner had tried to encroach upon the same by criminally trespassing into the same and causing damage to the paddy waste. There are serious and specific allegations against the petitioner and it is not a good case, where the FIR should be quashed by this Court while exercising inherent powers under Section 482 of the Code. Therefore, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

6. At the outset, I deem it appropriate to consider the scope of interference in chargesheet that has been filed by the police against the petitioners. An accused certainly can approach High Court under Section 482 Cr.P.C. (*which is pari materia with Section 528 of BNSS, 2023*) or under Article 227 of the Constitution of India to have the proceedings quashed against him, when the complaint does not make out any case against him. Hon'ble Supreme Court has laid down broad principles of law relating to exercise of extraordinary power under Article 226 of the Constitution of India to quash the FIR/Challan report in a celebrated judgment cited as ***State of Haryana vs. Bhajan Lal and others : 1991 (1) RCR (Criminal) 383***, wherein it has been held that the power to quash an FIR/chargesheet can be exercised either to prevent abuse of process of Court or otherwise to secure the ends of justice. The following categories of cases have been detailed, wherein such powers can 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.



7. The principles of law as laid down by Hon'ble Supreme Court in ***Bhajan Lal***'s case (supra) have been followed in a catena of judgments. In ***Paramjeet Batra vs. State of Uttarakhan : (2013) 11 SCC 673***, it was observed by Hon'ble Supreme Court that although the inherent powers of a High Court under Section 482 of the Code should be exercised sparingly and only for the purpose of preventing abuse of process of any Court or otherwise to secure ends of justice, yet, the High Court must not hesitate in quashing such criminal proceedings, where essential ingredients of the offence are not made out. In ***Randhir Singh vs. State of Uttar Pradesh : (2021) 14 SCC 626***, it was observed by Hon'ble Supreme Court that criminal proceedings cannot be taken recourse to as a weapon of harassment.

8. Keeping the above mentioned principles of law into mind, let us notice as to whether in the instant case, there is any scope of interference of this Court in the present petition relating to quashing of FIR/Challan report as filed against the petitioner. The petitioner has been booked for commission of offence punishable under Section 447 of IPC, which provides punishment for offence of criminal trespass. The offence of criminal trespass is defined under Section 441 of IPC. The ingredients for commission of offence under this section are as under:

- (a) (i) Unauthorized or unlawful entry into or upon property in the possession of another, or
- (ii) having lawfully entered unlawfully remaining there.
- (b) With intent, in either case.
- (i) to commit an offence, or
- (ii) intimidate, insult or annoy any person in possession of such property



9. On a bare reading of the above, it is clear that to constitute an offence of criminal trespass, there must be unauthorized or unlawful entry into or upon the property, which is in possession of another or lawful entry but unlawfully remaining in such property with intention to commit such offence. In the instant case, the allegations are that the petitioner had made an attempt to criminally trespass into the property owned by the daughters of niece of the present complainant, who are his granddaughters as well. It is revealed from the record that Paramjeet Kaur, who is ex-daughter in law of the petitioner, and her daughters had filed a civil suit for declaration bearing No. 286 of 2013, titled as *Smt. Paramjit Kaur and another vs. Varinder Singh and others* and vide judgment dated 19.03.2018 (Annexure P-3), the said suit had been decreed and the granddaughters of the petitioner, namely Samreen Kaur and Ivleen Kaur, were held entitled to join possession to the extent of 1/3rd share in the property transferred by their father in favour of the present petitioner and his wife by declaring them to be coparceners in Hindu joint family. The transfer deed qua that property executed by son of the petitioner had also been declared null and void. The complainant is claiming possession of Samreen Kaur and Ivleen Kaur over the property in dispute on the basis of this very judgment and decree as well as Khasra Girdawari (Annexure P-7) entered on the basis of this decree. It is not disputed that an appeal against the aforesaid judgment and decree is pending before the first appellate Court, which had previously set aside the above decree but in a regular second appeal as filed before this Court, the matter has been remanded to the first appellate Court. In the judgment dated 19.03.2018, the learned trial Court is shown to have specifically observed that the present petitioner and his son were in



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cultivating possession of the land, which was the subject matter of the dispute in the above said suit, and even after passing of this decree, the son of the present petitioner continued to remain co-sharer in this area of land. He is admittedly residing abroad and the petitioner, on his behalf, is in possession of his share. The complainant has claimed possession of Samreen Kaur and Ivleen Kaur on the basis of the same decree, which has only held them to be entitled to joint possession without observing that they are in actual physical possession of the same or not.

10. The stand as taken by respondent No. 2/complainant is that and it is also alleged in the FIR that one Manjeet Singh was in cultivating possession of the share of Samreen Kaur and Ivleen Kaur from the year 2018 and he had vacated the same just after the date of occurrence after harvesting his paddy crop and leaving its stubble therein. The said Manjeet Singh had filed an affidavit (Annexure P-4) to this effect before the investigating agency and this fact finds mention in the challan report also that he had grown paddy crop over the disputed land. A perusal of the affidavit (Annexure P-4), however, reveals that in para No. 1 of the same, he had mentioned that he had taken the land in question on lease on 01.04.2022 from respondent No. 2, who used to give this land on lease on behalf of Paramjeet Kaur and her daughters and had remained in his possession from 01.04.2022 to March, 2023, but in the last paragraph of the same affidavit, contrary to his previous claim, he has mentioned that the said land remained in his possession from 01.04.2018 to 18.11.2022. These contrary pleas themselves are indicative of the fact that the same are false. More so, no material is shown to have been collected by the investigating agency to show that respondent No. 2 had been given any



authorization by the granddaughters of the petitioner to give their share in the land on lease to above said Manjeet Singh or anybody else or any lease deed was executed in favour of Manjeet Singh. Further, interestingly, no khasra girdawari entry showing possession of Manjeet Singh over any part of the land in dispute has been placed on record by respondent No. 2. Merely on the basis of the plea taken in the affidavit, it cannot be assumed that the above said Manjeet Singh was in fact in actual physical possession of any portion of the property in dispute and had grown any crop over it, especially in the circumstance when neither in the complaint nor in his affidavit, the numbers of khewat, khasra or khatauni of such land have been mentioned.

11. Then, Annexure P-3 is copy of the mutation No. 892 sanctioned on 28.04.2020 on the basis of the judgment passed in aforesaid civil suit No. 286 showing transfer of ownership of the property in dispute in favour of granddaughters of the petitioner to the extent of 1/3rd share and name of son of the petitioner is shown as co-sharer to the extent of remaining share. In the column of cultivation, it is recorded that the same entries which were going on had to be followed. It is not the case of respondent No. 2 that the granddaughters of the petitioner were previously in possession of the disputed property. Meaning thereby that the cultivation in fact continued with Varinder Singh. As already discussed, since he was residing abroad, therefore, the petitioner, on his behalf, is in cultivating possession of the same. It is worth mentioning that in the civil appeal filed by the petitioner, an order to maintain status quo with regard to possession over the said land has been passed by the first appellate Court. There is nothing on record to suggest that the granddaughters of the petitioner or anybody else on their behalf were handed



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over the actual physical possession of any land fallen to their share at any point of time. In such circumstance, the question of committing offence of criminal trespass in the property of his granddaughters by the petitioner could not arise. More so, the petitioner is obviously in occupation of share of land owned by his son and on his behalf and, therefore, he cannot be even otherwise stated to have committed any act of criminal trespass with regard to the same property, which is undisputedly unpartitioned since well settled proposition of law is that the possession of the one co-sharer in unpartitioned property is deemed to be possession of all the co-sharers unless the same is partitioned by metes and bounds and a co-sharer in the joint land cannot be said to have committed offence of criminal trespass. Reference in this regard can be had to the observations made by the High Court of Jammu and Kashmir in ***Dilshada Sheikh vs. Saba Sheikh : 2022 (3) JKJ 317***. Reliance in this context can also be placed upon the observations made by Hon'ble Supreme Court in ***Rajinder Singh Katoch vs. Chandigarh Administration and another : (2007) 10 SCC 69*** as well as upon the judgments rendered by this Court on 13.03.2013 in ***CRM-M-34854-2011***, titled as ***Dilbagh Singh vs. State of Punjab***, and by Delhi High Court in ***Rajesh Bajaj vs. State of NCT of Delhi : 1999 (3) SCC 259***. Reference can also be made to ***Bhupendra Singh Verma vs. State (NCT of Delh) : (2019) 3 JCC 2027***, wherein there was dispute between a father and son pertaining to a joint property. It was held that criminal proceedings cannot be set into motion in relation to a family dispute when there is nothing on record to show that the complainant was in exclusive possession of any portion of the property under a family arrangement. In the instant case, the granddaughters of the petitioner have also taken recourse to



civil remedies and it is explicit that a dispute, which is of civil nature, has been given colour of an offence of criminal trespass, which amounts to abuse of process of law and should not be allowed. Accordingly, it is held that the prosecution of the petitioner under Section 447 read with Section 511 of IPC is not sustainable and hence is liable to be quashed.

12. So far as the offence under Section 427 of IPC is concerned, the allegations are that the petitioner, while trying to enter into the land in possession of his granddaughters, had tried to cause damage to stubble of paddy crop as standing in the fields and thereby committed an offence of mischief. The offence of mischief is defined under Section 425 of IPC. In order that this section may apply, it is required to show and prove that the accused:

(i) caused the destruction of some property or some change in it or in its situation.

(ii) Such change must have destroyed or diminished the value or utility of the property or affected the property injuriously.

(iii) The causing of destruction or change in the property or in its situation must have been with the intention to cause or with the knowledge of the likelihood of thereby causing wrongful loss or damage to the public or to any person.

13. On a bare reading of the above provision, it is clear that the main ingredient of offence of mischief is that there must be intent to cause wrongful loss or damage to the property and with that intent, destruction and damage should be caused resulting in diminishing the value or utility of some property. Mere causing of loss is not enough and criminal intention to cause



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such loss should also be established. In the instant case, however, there are bald allegations in the complaint that the petitioner had set the paddy waste/stubble on fire without producing any material on record to show so. Neither any photograph, video nor report of the Halqa Patwari regarding damage of the crop/paddy waste has been produced on record nor there is any other material on record to show that the alleged damage had been caused or attempted to be caused on the particular part of land having fallen to the share of the granddaughters of the petitioner. There is also no allegation that such damage had diminished or destroyed the value or utility of the property in question or caused some change in its situation. Hence, it cannot be said that even a *prima facie* case for commission of offence under Section 427 of IPC was made out against the petitioner.

14. As a fallout and consequence of above stated legal analysis and in view of the peculiar facts and circumstances of the case, it is held that the instant one is a fit case for exercising inherent powers of this Court under Section 482 Cr.P.C. to do real and substantial justice as the continuation of criminal proceedings against the petitioner would amount to abuse of process of law. Accordingly, the present petition is allowed and FIR No. 125 dated 20.11.2022, registered under Sections 427 and 447 read with Section 511 of the IPC at Police Station Sandaur, District Malerkotla as registered against the petitioner, *challan* report and all the proceedings having emanated therefrom are hereby ordered to be quashed.

24.01.2025

Waseem Ansari

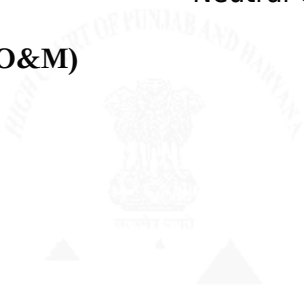
(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No



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