
(1993) 12 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5954-M of 1993 (O&M)

Dhan Pat Rai and anr.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 02-12-1993

Acts Referred:

Citation : (1994) 1 RCR(Criminal) 509

Hon'ble Judges : J.B.Garg, J

Advocate : D. N. Ganeriwala, Suvir Dewan, R. K. Jain, Advocates for appearing Parties

Judgement

J. B. Garg, J.

1. Dhanpat Rai an ExSarpanch and his brother Maman Ram residents of village Hanjira District Sirsa, have moved the present petition under Section 482 of the Code of Criminal Procedure challenging FIR No. 25 of 24.2.1993 registered at Police Station Nathusari Chopta, District Sirsa for offences under Sections 420, 467, 468 and 471 of the Indian Penal Code.

2. It shall be useful to reproduce Annexure P1 which is copy of the FIR and is as under:

"The Deputy Commissioner, Sirsa vide his letter Memo No. 409/Panchayat dated 27.1.1993 in which there is a reference of illegal dispossession of Panchayat land by Dhanpat Rai, ExSarpanch, Gram Panchayat village Hanzira and Mohan Ram both sons of Jaimal resident of village Hanzira. In this letter the Deputy Commissioner has stated that Dhanpat Ram ExSarpanch Gram Panchayat Hanzira sold two kanals of land of Panchayat by sale deed 3996 and 4002 dated 3.3.1970 without permission and has not deposited the sale proceeds of two kanals of land in the Panchayat fund. It is also stated that on the basis of these sale deeds by playing fraud in the Court got the ownership of 23 kanals of land whereas the total sale deeds were of 22kanals (4 kanals). In this way Dhanpat Rai ExSarpanch and Moman Ram sons of Jaimal and Hira son of Hem Raj have

misappropriated the property of Panchayat, therefore, you are requested that as per direction of Deputy Commissioner Sirsa and the resolution No. I dated 22.1.1992 passed by the Panchayat, case be registered of cheating against Dhanpat Ram ExSarpanch Moman son of Jaimal, Hira son of Hem Raj residents of Hanzira."

3. One of the pleas taken in this petition is that the main allegation is that two kanals land of Panchayat was sold vide sale deed No. 3996 and 4002 dated 3.3.1970 and that the proceeds were not deposited in the funds of the Panchayat. The plea put forward by the petitioners is that two kanals of land was sold to Hira son of Hem Raj for a sum of Rs. 323.20 after obtaining permission from the Deputy Commissioner, Hisar which was conveyed vide his letter No. 1400 dated 9.2.1970. A copy of the saledeed Annexure P2 has been placed on record by the petitioners and it shows that the letter of the Deputy Commissioner dated 9.2.1970 finds mention in the body of the saledeed itself.

4. The learned counsel for the petitioners has also pointed out that civil suit has been instituted by Gram Panchayat against Dhanpat Rai petitioner No. 1 who is the Ex Sarpanch and six others wherein the Gram Panchayat has claimed ownership of land measuring 23 Kanals and the saledeed dated 3.3.70 has also been challenged therein and a copy of the plaint is Annexure P4. The fact that a civil suit is pending has not been controverted by the respondent No. I in their reply dated 19.9.1993 and on the contrary a general plea has been taken that the mere pendency of the civil suit is no bar to initiate the criminal proceedings. The facts and circumstances of each case are to be considered by the Court. Here, petitioner No. 1 Dhanpat Rai is an ExSarpanch and it shall be an abuse of the process of the Court to prosecute him in respect of the alleged sale dated 3.3.1970 which as claimed was effected with the approval of the then Deputy Commissioner and sale proceeds were received by the Gram Panchayat, Hanzira.

5. Similarly, the learned counsel for the petitioners has pointed out that the allegation of misappropriation of a sum of Rs. 646.40 was also unsustainable inasmuch as this amount of sale proceeds was deposited in the Panchayat funds as per recital in the sale deed dated 3.3.70 Ex.P2/B. There has been a regular audit of the accounts of the Gram Panchayat but no audit objection was ever raised. The petitioner No. I had been contesting elections to the post of Sarpanch of the Gram Panchayat since 1970 and he was always issued a "No Due Certificate" before filing of the nomination papers. If at all, it was within the knowledge of the Gram Panchayat or the State Government that the petitioner had not deposited the sale proceeds they would have never allowed the petitioner to contest the elections and that the present FIR has simply been registered only on account of political rivalry. These questions of fact have not been controverted effectively. The conclusion is that the petition succeeds and the impugned FIR in respect of transactions pertaining to March 1970, is hereby quashed.