

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
SINGLE BENCH
BEFORE JUSTICE S.K.AWASTHI
Misc. Cri. Case No.5284/2014

Dina and others

Versus

State of Madhya Pradesh
and another

Shri Bhupendra Singh Dhakad, learned counsel for the applicants.

Ms. Sudha Shrivastava, learned Panel Lawyer, for the respondent No.1/State.

None for the respondent No.2 though represented.

ORDER
(26.10.2016)

The applicants have invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure (for brevity, the 'CrPC'), for quashing the First Information Report (FIR) dated 19.12.2013, registered at Crime No.136/2013 by Police Station Chinnoni, District Morena, for the offence under Section 379 of Indian Penal Code, 1860 (for brevity, the 'IPC'), and also for quashing of subsequent charge sheet No. 18 of 2014 filed before the Court of Judicial Magistrate First Class, Sabalgarh, District Morena.

2. The agricultural land bearing survey No.28, situated at village Jarena (Mangarh), Tahsil

Kailaras, District Morena is the root for initiation of criminal prosecution. As per the prosecution case, the allegation levelled against the applicants is that on 5.7.2013 they entered into the agricultural field belonging to respondent No.2 and took away crops by force without consent of respondent No.2, thereupon, FIR for commission of offence under Section 379, IPC, was registered against the applicants. The respondent No.1 concluded the investigation and filed the charge sheet before the Court of Judicial Magistrate First Class, Sabalgarh, District Morena.

3. The contentions, which have been canvassed by the learned counsel for the applicants are that they have been falsely implicated in the instant case on account of previous enmity with the respondent No.2. In fact, for the land in question three murders have been caused and lodging of the FIR is a counterblast by the respondent No.2. In order to support this contention, learned counsel for the applicants has brought on record the antecedent of the dispute with respect to survey No.28 (supra). It appears that the said survey number was subject matter of transfer in favour of respondent No.2, however, due to some dispute with respect to entitlement of executor of sale deed, relative of

respondent No.2 caused death of the father and uncle of applicant No.1, since then the main accused Lalaram is absconding and the police initiated proceeding under Section 82 of CrPC to declare him as absconder/proclaimed offender. Therefore, in order to avoid attachment of property in the name of Lalaram, the sale deed dated 18.3.2011 was executed without there being any right available to him. The respondent No.2 submitted an application for mutation of land in question in his favour before the Court of Tahsildar, before whom the applicant No.1 appeared as an objector. However, the application was allowed vide order dated 29.4.2013 (Annexure A-3). This order was challenged by filing an appeal before the Sub-Divisional Officer (Revenue), which was also rejected vide order dated 18.11.2013. Accordingly, another appeal before the Commissioner (Revenue) has been filed by the applicant No.1, which is still pending for consideration.

4. The applicant No.1 has further contended that while the proceeding with respect to ownership of land is pending before the court of competent jurisdiction, the possession of the land in question has remained with him (applicant No.1). In order to substantiate this contention with regard to

possession of the applicant No.1, it is submitted that the respondent No.2 had filed an application under Section 145 CrPC, due to the fact that the present applicants were allegedly interfering with the peaceful possession of the respondent No.2. In the said proceeding before the Sub-Divisional Magistrate, Sabalgarh, the Revenue Inspector was directed to submit a report regarding status of the land and its possession. The Revenue Inspector prepared the Panchnama, in which it was observed that on account of the land in question, there is a possibility that the peace and tranquility of the village may be disturbed, therefore, it was recommended that an appropriate order for maintaining peace may be passed. While preparing the report, the Revenue Inspector reduced in writing the statement of respondent No.2, according to which respondent No.2 has himself admitted the fact that the applicant No.1 is in possession of the land in question. Accordingly, it is submitted that the Court of S.D.M. directed the applicant No.1 to continue with cultivation of the land in question and after deduction of expenses, the remaining proceeds from the cultivation be deposited with the Tahsildar, Kailaras. Further, it has been emphasized by learned counsel for the applicants that the

correspondence issued by the Tahsildar, Kailaras dated 13.5.2014 (Annexure A-8) and letter dated 21.5.2014 (Annexure A-10) by Sub-Divisional Magistrate, Sabalgarh, clearly reveal that the applicant No.1 had deposited the proceeds received from the crop cultivated on the land in question and the SDM, Sabalgarh had allowed release of the money to the applicant No.1. It is pointed out that on the date of alleged incident, i.e., 5.7.2013, the applicant No.1 was in possession of the land and the allegation relating to commission of offence under Section 379 IPC is false and frivolous.

5. Per Contra, learned State Counsel has submitted that the registration of FIR is on account of actual incident and the application deserves to be dismissed.

6. I have considered the rival contentions advanced on behalf of the parties.

7. It is pertinent to highlight that the applicants have been able to bring on record the documents discussed above, which clearly show that the applicants were in possession of the land in question. This fact finds corroboration by the report prepared by the Revenue Inspector that the respondent No.2, in his statement, has admitted the possession of applicant No.1 over the land in

question. Moreover, the documents, Annexures A/8 and A/10, clearly show the acknowledgment by the revenue authorities of the proceeds deposited by the applicant No.1. It is also worth mention that the respondent No.2 had filed civil suit before the Second Civil Judge Class-2, Sabalgarh, who after due consideration observed that the possession of respondent No.2 over the land in question is not prima facie proved.

8. Further in terms of the order passed by the Sub-Divisional Magistrate, Sabalgarh, the possession of the land is with the Sarpanch of the village, under whose supervision the applicant is cultivating the land and depositing the proceeds with the Tahsildar, Kailaras.

9. Learned counsel for the applicants has placed reliance on the decision of Supreme Court in the case of **Rajiv Thapar and others vs. Madan Lal Kapoor (2013) 3 SCC 330**, to submit that the facts of the present case fulfill the criteria laid down by the Hon'ble Apex Court for quashing of FIR or criminal proceeding.

10. In my opinion, the contention of learned counsel for the applicants deserves acceptance in the light of the discussion made herein above.

11. Taking into consideration the fact and

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circumstances of the present case and the discussion made herein above, this Court is of the considered opinion that it is a fit case for quashment of FIR on the basis of material brought on record by the applicants. Consequently, the present application under Section 482 CrPC is allowed and the FIR bearing Crime No.136/2013 as well as subsequent charge sheet No.18/2014 before the Court of Judicial Magistrate First Class, Sabalgarh, for the offence under Section 379 IPC, are hereby quashed.

A copy of this order be sent to the concerned court below.

(S.K.Awasthi)
Judge.

(yogesh)