

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

**Pet. u/s 561-A Cr.P.C. No. 374/2015
MP No. 01/2015**

Date of decision : 31.10.2017

Jatinder Singh Aulakh vs. State of J&K and another

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearance:

For the petitioner(s) : Mr. L. K. Sharma, Sr. Adv, Mr. Navneet Dubey and Mr. Jatinder Singh, Advocates

For the respondent(s): Mr. S. S. Nanda, Sr. AAG for No. 1
Ms. Surinder Kour, Sr. Adv.
with Ms. Vandana Kumari, Adv. for
and Mr. Jatinder Singh, Advocates

1. In this petition under section 561-A Cr.P.C. petitioner seeks quashing of FIR No. 21/2015 dated 17.04.2015 registered at Police Station, Jammu under sections 420, 465, 467, 468, 471, 120-B RPC read with section 5(2) P. C. Act (hereinafter to be referred as the impugned FIR) against him and some revenue officers/officials on a complaint lodged by respondent No. 2 (hereinafter to be referred as the informant).
 2. Heard learned counsel for the parties and perused the record.
 3. Informant, Dr. Guneet Singh filed a suit for permanent prohibitory injunction against the petitioner, Jatinder Singh Aulakh, and two others *inter alia* for restraining them from interfering with his possession of the land measuring 36 kanals

comprised in khasra No. 8 min and 20 kanals comprised in khasra No. 67 situate at village Chatha, Tehsil and District, Jammu. He also filed an application for temporary injunction. The suit and the application for temporary injunction seem to have been filed in September, 2013. The case set out by the informant, precisely was that his father was co-owners of hundreds of kanals of land in village, Khandwal and was also in possession of the suit land, which adjoins the land owned by him and falls in village, Chatha. The suit land was inherited by the informant along with his mother and sister after the death of their father. He alleged in the suit that in the year, 2000, the petitioner by playing fraud with revenue officials fraudulently managed to get attested in his favour mutation No. 667/1 qua the land comprised in khasra 8 and mutation No. 757 qua the land comprised in khasra No. 67. Both the mutations are illegal and *void ab initio* as the petitioner at the time of attestation of these mutations was only 13 years old and has now settled abroad. He approached revenue authorities but was shocked to know that there was no record available with respect to the aforementioned mutations. A couple of months before filing of the suit, he approached the Financial Commissioner, Revenue and apprised him of the illegal act and fraud played by the petitioner in connivance with the revenue officials and the Financial Commissioner vide his order dated 23.04.2013 directed the

Assistant Commissioner, Nazool to conduct an inquiry into the matter, which is going on.

4. Petitioner (defendant No. 1) contested the suit filed by the informant (plaintiff). Plea taken by him is that the land in village, Khandwal was purchased by Late S. Beant Singh, who was the grandfather of the petitioner and the informant. Their grandfather died in the year 1993 and after his death his sons occupied their shares in accordance with the will executed by the deceased. The suit land, however, was a part of 'shamlat deh' of village, Chatha. This land got eroded in river, Tawi and became part of the river bed. The plea taken by the petitioner further is that in late 1990s many people reclaimed land comprised in these two khasra numbers and likewise the suit land was reclaimed and made culturable by him and his father in the years 1997-98. He at that time was about 14 years as his actual date of birth is 10.02.1984, which, however, is wrongly recorded in the school records as 10.02.1987. He started cultivating the suit land after it was reclaimed from the river bed. The land so reclaimed was mutated in favour of the respective persons in possession and likewise the aforementioned mutations were attested in his favour on 27.05.2000.
5. The application for temporary injunction was dismissed by the trial court by virtue of its order dated 18.11.2013. Learned trial court after examining and according consideration to the

documents produced by both the sides arrived at a conclusion that the informant (plaintiff) has failed to make out a *prima facie* case nor the balance of convenience was in his favour. Learned trial court noticed that the petitioner (defendant No. 1) was figuring in the ownership as well as in the possession column of the revenue record relating to the year 2012 (Rabi). The mutations have been attested in his favour and in addition he has obtained loan by mortgaging the said land. Learned trial court also noticed the initiation of inquiry by the Financial Commissioner on the basis of a complaint lodged by informant in respect of the attestation of aforementioned mutations but took the view that while deciding an application for temporary injunction, such an inquiry cannot be taken into consideration.

6. The order passed by the learned trial court was challenged by the informant in appeal in the court of learned District Judge, Jammu, which, however, was dismissed on 01.07.2014. Learned District Judge took the view that the order passed by the trial court is correct in view of the facts of the case and law on the point.
7. After dismissal of the appeal on 01.07.2014, the informant (plaintiff) filed a complaint in the court of the Special Municipal Mobile Magistrate, Jammu. The learned Magistrate forwarded the complaint to the Crime Branch Police, Jammu. On the basis whereof, the impugned FIR under sections 420, 465, 467, 468,

471, 120-B RPC read with section 5(2) P. C. Act against the petitioner and the concerned revenue officers/officials has been registered. The impugned FIR on reading would show that the informant in the complaint filed by him contended that his father and uncles had inherited a big chunk of land owned by his father in village, Khandwal. His father being co-owner in the said land was also in possession of the aforementioned land measuring 36 kanals and 20 kanals. He alleged in the complaint *inter alia* that “the revenue officials manipulated the revenue records and changed the ownership of the land in furtherance of a criminal conspiracy and facilitated attestation of mutation No. 667/1 min in khasra No. 8 min in respect of land situate at Khandwal and mutation No. 757 in respect of land situate at Chatha in favour of Jatinder Singh Aulakh” in the year 2001 by invoking section 221 of the Land Revenue Act. The respondent No. 2, thus, sought registration of case and the impugned FIR, thus, came to be registered.

8. Disputed questions of fact arise for determination of the trial court in the suit filed by the informant. According to him, aforementioned land comprised in khasra Nos. 8 min and 67 falling in village, Chatha was in possession of his father along with his ownership land falling in village, Khandwal and after the death of his father the said possession has been inherited by him. He, however, is silent about the ownership of the said land and does not say as to how his father came in possession of the

said land falling in village, Chatha along with his property land falling in village, Khandwal. It is not his claim in the civil suit that he or his father was ever recorded in possession of the said land. On the other hand, the case of the petitioner is that the said land is part of 'shamlat deh' of village, Chatha, which earlier had got eroded in river Tawi and in late 1990s was reclaimed by him and his father and was later mutated in his favour.

9. As to which of the two parties is in possession of the suit land is a question of fact to be determined by the civil court. The legality of the two mutations should have been questioned by the informant by challenging them before the competent forum. The informant, however, has opted to file a complaint before the Financial Commissioner (Rev), who is said to have directed inquiry into the matter by the Assistant Commissioner, Nazool, Jammu. Illegality or criminal element, if any, in the said mutations is likely to be looked into by the inquiry officer and on the basis of his report suitable action taken by the Financial Commissioner.
10. In backdrop of the pendency of the suit filed by the informant and pendency of inquiry on the application filed by him, there was neither any scope nor necessity of lodging the FIR. It is evident that the informant resorted to file the complaint after losing in the application for temporary injunction. The filing of the complaint by the informant and thereby seeking registration

of case by the Crime Branch Police in the aforementioned backdrop was a sheer abuse of process of court by him. It is important to note in this context that as per the contents of the impugned FIR, the informant in the complaint filed by him had disclosed neither the pendency of the civil suit filed by him and dismissal of the application for temporary injunction nor the commencement of inquiry ordered by the Financial Commissioner. Had these facts been disclosed, the learned Magistrate would have got sufficient material for taking decision as to whether registration of FIR and investigation still was required or not. As a civil court and revenue authorities are seized of the matter, which certainly involves the determination of the fact relating to possession on spot and legality/criminality in attestation of the mutations (supra), parallel investigation by the police is not required and filing of the complaint and registration of the FIR would be the abuse of process of court and the legal process.

11. For the aforementioned, this petition is allowed and the impugned FIR is quashed.

**(Janak Raj Kotwal)
Judge**

Jammu:
31.10.2017
Rakesh