

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Criminal Revision No. 40 of 2012

Judgment reserved on : 21.8.2012

Date of decision: 18.9.2012.

Kr. Daler Singh son of Sh. Bhagat Singh, resident of Village Bara Bhuin/Paria Bhunter, Tehsil and District Kullu, H.P.

...Petitioner.

Versus

1. Hans Raj, Ex-Pradhan, Gram Panchayat, Bara Bhuin-Bhunter, Tehsil and District Kullu, H.P.
2. Prem Chand (retired Teacher), son of Sh. Udho Dass, R/o Near Sr. Secondary School, Bhunter, Tehsil and District Kullu, H.P.
3. Smt. Godawari, wife of Sh. Prem Chand, R/o Near Sr. Secondary School, Bhunter, Tehsil and District Kullu, H.P.
4. Sh. Hari Krishan (Retd. Teacher), S/o Sh. Udho Dass, R/o Parla Bhunter, Tehsil and District Kullu, H.P.
5. Shashi Pal, Teacher, son of Amritsara, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P.
6. Satta, son of Amritsara, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P.
7. Launshi Ram alias Puran Chand, S/o Udhmi Gharati, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P.
8. Kanhayia Ram, S/o Puran Chand @ Launshi, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P. (deleted from the array of the respondents vide order dated 05.04.2012).
9. Hari Krishan Uppal, S/o not known, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P.
10. Gaurav Uppal, S/o Hari Krishan Uppal, R/o Near Sr. Sec. School, Bhunter, Tehsil and District Kullu, H.P.
11. Sh. Prem Chand Ghai, son of Sh. Tarlok Chand, Near Sr. Sec. School, Bhunter, District, Kullu, H.P.
12. Mrs. Neelam wife of Sh. Prem Chand, Near Sr. Sec. School, Bhunter, District, Kullu, H.P.
13. Bharat, son of Prem Chand, R/o Near Gurdwara Bhunter, Tehsil and District Kullu, H.P.
14. Janak Raj, s/o not known, R/o Near Gurdwara, Bhunter, Tehsil and District Kullu, H.P.
15. Mrs. Chatanya, wife of Sh. Janak Raj, Near Sr. Sec. School, Bhunter, District Kullu, H.P.
16. Mrs. Mangli, wife of Phandi Ram, Near Sr. Sec. School, Bhunter, District Kullu, H.P.
17. Surinder son of Phandi Ram, Near Sr. Sec. School, Bhunter, District Kullu, H.P.
18. Shivu, Contractor, Near Govt. Sr. Sec. School, Bhunter, District Kullu, H.P.
19. Mrs. Krishna wife of Shibhu

All residents of Near Sr. Sec. School, Bhunter, Tehsil and District,
Kullu, H.P.

....Respondents/Accused.

20.State of H.P.

....Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting ? No

For the Petitioner : Mr. Ajay Sharma, Advocate.

**For the Respondents. : Mr. Atul Jhingan, Advocate, for
respondents No. 1 to 7 and 9 to 19.**

**Ms. Ruma Kaushik, Additional Advocate
General with Mr. Vinod Thakur, Dy. A.G. for
respondent No. 20.**

Kuldip Singh, Judge

The order dated 23.2.2011 in Criminal case No. 474-1 of 2006 passed by learned Chief Judicial Magistrate, Kullu was assailed in appeal which has been ordered to be treated as revision.

2. It has been stated that the petitioner had filed a complaint before the Pradhan of Panchayat on 25.2.2006 that the persons named in the complaint trespassed the premises of the complainant, indulged in theft and were provoking the breach of peace. According to the complainant, the persons named in the complaint on 27.2.2006 at about 2.30 p.m. constituted an unlawful assembly, committed offence of assault for voluntarily causing hurt and raided the house of the complainant. The accused removed and took away dishonestly timber wood, fuel wood, iron barbed wire and misappropriated property causing loss of ₹ 50,000/-.

3. It was alleged that Pradhan had lodged a false complaint

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ? yes*

before S.D.M., Kullu against the complainant with respect to the obstruction of general path. The Incharge, Police Post, Bhunter was apprised of the above facts but he favoured the accused persons by submitting the report to the S.D.M., Kullu.

4. The preliminary evidence was recorded, accused persons were summoned. CW-1 to CW-4 were examined. The Court below after examining the witnesses on 23.2.2011 discharged the accused and dismissed the complaint.

5. The discharge order has been assailed on the grounds that the Court below has erred in discharging the accused. On the basis of the complaint and evidence on record the case has been made out against the accused.

6. The petitioner had filed complaint under Sections 379, 385, 383, 441, 451, 506, 511, 120-B read with Section 34 IPC. The statements of CW-1 to CW-4 fully establish the ingredients of offence against the respondents as submitted in the complaint. The impugned order is unreasoned and the accused have been wrongly discharged.

7. The minor contradictions crept in owing to passage of time, which ought to have been ignored. The Court below over stepped the jurisdiction vested in it and committed material irregularity in discharging the accused. The impugned order is perverse.

8. Heard and perused the record. The petitioner filed the complaint on 13.11.2006 against the respondents for offences punishable under Sections 379, 385, 383, 441, 451, 506, 511, 120-B read with Section 34 IPC. It has been stated in the complaint that the complaint was lodged with Hans Raj, Pradhan, Gram Panchayat, Bara Bhuin, Bhunter on 25.2.2006. On 27.2.2006 at about 2.30 p.m. Gram Panchayat with

Panchayat Members and accused persons assembled and joined unlawful assembly to commit offence of assault for voluntarily causing hurt raided the house. The accused Nos. 1 to 19 removed and taken away iron barbed wire kept for fencing the orchard and misappropriated property causing loss of ₹ 50,000/-. Hans Raj lodged frivolous complaint in the Court of S.D.M. that complainant Daler Singh had obstructed the general public path with ulterior motive to grab the valuable land. Dorje, S.I. Police Incharge, Police Post, Bhunter was apprised of the facts, he abetted and favoured the accused by submitting a report to S.D.M. Kullu. Dorje, S.I. misbehaved with the complainant at Police Post, Bhunter and threatened the complainant to face consequences. Prem Chand, Bharat intend to grab the land of the complainant as they were illegally using it for last many years.

9. CW-1 Daler Singh has stated that he had been practicing as an Advocate at Shimla. He had come to Bhunter on 25.9.2006. His mother in law Smt. Chand informed him that accused had been trespassing over the land and the orchard. The accused had been damaging the property, they take away anything kept outside. He reported to Pradhan by lodging report Ex.C-1. He had gone to Shimla, Pradhan assured him that he would take action on the complaint.

10. CW-1 continued that after two days he was informed on telephone that President, Panchayat Members and other accused trespassed in their land, the path which was closed by them and was kept for their personal use was opened by the Panchayat and accused. The barbed wire and other obstruction placed by the complainant side was also removed by the accused. They cleared the path and took away the wood. He submitted a written complaint to Deputy Commissioner and

Superintendent of Police. They told that written complaint be faxed to them which was sent by him. He came to Kullu after some time and obtained information under Right to Information Act, thereafter he filed the complaint.

11. In cross-examination, he has stated that the path in dispute was being used for the last 15-20 years. The path is before his marriage. He had stopped IPH Department from laying the pipes in the path, an FIR was lodged at Police Station, Bhunter. The accused were witnesses against him. The complaint was filed by him after the lodging of FIR. He does not know that the path in dispute was made pucca by the Gram Panchayat, Bara Bhuin. He wanted that the path should be closed for the accused and general public and it should be used by him and his family only. The path is in his land. The dispute is only of path. He had filed 3-4 civil cases against the accused, all have been dismissed but pending in appeal. He is not an eye witness of any incident mentioned in the complaint.

12. CW-2 Smt. Chand Kaur has stated that she had suffered loss. Deodar slippers were taken away during night. Poles were also uprooted, cattle entered in the orchard. Prem Chand had stolen 50-60 deodar slippers. She does not know who committed the theft but again stated that accused committed the theft. The grass which was kept in the field was also burnt but she does not know who put the grass on fire. At the time of opening of the path all accused had come, SHO had come on the spot. The path is not recorded in the revenue record. In cross-examination, she has stated that she had not seen anybody on the spot due to darkness nor she had seen anybody uprooting the poles and taking away material. She does not know their names.

13. CW-3 Hotam Ram, Junior Assistant has produced letter dated 27.7.2006 Ex.CW-3/A. CW-4 Kulbhushan, Assistant A.D.M. office, Kullu has proved Ex.CW-4/A. Ex.P-1 is the letter dated 25.2.2006 addressed by the petitioner to Pradhan, Gram Panchayat, Bara Bhuin. Ex.CW-3/A is the copy of letter dated 27.7.2006 of S.D.M. Kullu to Additional District Magistrate, Kullu. It has been stated that there is a path on the spot on khasra Nos. 4273, 4265, 4234 but no path has been shown in the record. Ex.CW-4/A is the copy of application dated 1.6.2006 of petitioner addressed to Deputy Commissioner, Kullu and others to supply certain information under Right to Information Act.

14. In the complaint, no khasra number of the land has been given. In Ex.P-1 dated 25.2.2006 the petitioner has stated that some anti-social elements are trespassing his premises and indulging in the theft, provoking breach of peace. The request was made to stop such elements from indulging in such activities. However, the persons indulging in such activities have not been identified. The main grievance in the complaint is that on 27.2.2006 at about 2.30 p.m. Gram Panchayat, Panchayat Members and accused assembled and joined unlawful assembly to commit offence. The accused No. 1 to 19 dishonestly stolen timber, fire wood, iron barbed wire kept for fencing of the orchard and dishonestly misappropriated property causing loss of ₹ 50,000/-. The allegations are sweeping, the property has not been identified nor specific part played by particular accused has been specified.

15. CW-1 Daler Singh in his statement has stated that he had come to Bhunter on 25.9.2006, but in complaint he has stated that he had come to Bhunter on 25.2.2006. He reported to Pradhan by lodging report Ex.C-1 (P-1). He had gone to Shimla. The path in dispute was being used

for the last 15-20 years. The path is before his marriage. He lodged FIR against the laying of pipes by IPH Department. The accused were witnesses against him. He filed complaint after the lodging of FIR. He does not know path in dispute was made pucca by Gram Panchayat, Bara Bhuin. He filed 3-4 civil cases and all were dismissed but pending in appeal. He is not an eye witness of the incident mentioned in the complaint. Thus whatever he has stated in the complaint is based upon hear say. However, he has admitted that there is a path in dispute which was being used for the last 15-20 years. There was litigation about this path and every time the cases were decided against him, though those cases are pending in appeal.

16. The petitioner in his statement has not named any person for the theft of timber, fire wood, poles, barbed wire. CW-2 Smt. Chand Kaur is the mother in law of the petitioner. She has also not named any person for the theft of deodar slippers. She has stated that the grass kept by her in the field was burnt. This is not the case of the petitioner in the complaint nor the petitioner has stated in his statement about the burning of the grass. CW-2 has also stated that she had not seen anybody on the spot due to darkness nor she had seen anybody uprooting the poles and taking away material. The petitioner has not examined any other witness of the spot in support of the complaint. CW-3 and CW-4 are the officials, who have only placed on record some documents. On the basis of statements of CW-1 and CW-2, no case is made out against any respondent for proceeding against as alleged in the complaint. The learned Chief Judicial Magistrate has rightly appreciated the material on record. There is no legal evidence on record in support of the complaint. The petitioner has failed to make out any case for interference. There is no merit in the revision.

17. In view of above, the revision is dismissed.

September 18, 2012
(GR)

(Kuldip Singh),
Judge.