

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Misc.No.A-802-MA of 2012

Date of Decision: July 23, 2015

Harjit Singh son of Shri Pritam ChandAppellant

Versus

Amar Singh son of Sh.Lachhman SinghRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Satbir Rathore, Advocate for the
applicant/appellant.

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TEJINDER SINGH DHINDSA, J.

The instant application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the applicant seeking leave to file appeal against the judgment of acquittal dated 26.7.2012 passed by the learned Judicial Magistrate Ist Class, Mukerian.

2. For the sake of brevity and to avoid repetition, the facts of the case may be noticed from the opening paragraph of the impugned judgment dated 26.7.2012 and which reads as under:

"The complainant Harjit Singh filed the present complaint under Sections 427, 434, 447 of the Indian Penal Code against the accused on the allegations that

complainant is resident of village Sansarpur, Tehsil Dasuya, Distt.Hoshiarpur and at present he is residing at Village Garhdiwal, Tehsil Dasuya, Distt.Hoshiarpur. He is owner in possession of land measuring 8 Kanals 1 Marlas in village Sansarpur bearing Khasra Nos.1131 (4-0), 1053(1-17) and 1054(2-4) and the same are entered in the jamabandi for the year 2004-05 the accused interfered in his possession over the land in the month of July 2008 upon which the complainant filed a civil suit titled as Harjit Singh vs. Amar Singh which was pending in the Court of Sh.D.S.Ralhan, PCS, Civil Judge (Jr.Divn.), Dasuya where the accused made statement that he will not interfere into the possession of the complainant and accordingly the said suit was dismissed as withdrawn on 4.8.2008. However, on 22.8.2008, accused Amar Singh came to the property of the complainant with his tractor at about 5.00/6.00 p.m., and ploughed the land of the complainant with his tractor. The occurrence was witnessed by Bihari Lal and Rulia Ram of village Sansarpur and they informed the complainant at about 8.00/9.00 on the same day. On 23.8.2008, the complainant moved an application to the SHO of the police station Hajipur but no action was taken against the accused by the police. Again on 3.9.2008, the complainant filed an application to SSP, Hoshiarpur which was marked to SHO, P.S.Hajipur but again no action was taken by the

police, hence the present complaint."

3. Preliminary evidence having been led by the complainant, accused/respondent herein Amar Singh was ordered to be summoned to face trial for offence under Sections 427, 434 and 447 of the Indian Penal Code. Upon having put in appearance, accused was admitted to bail. Accused pleaded not guilty and claimed trial. During the course of trial, complainant Harjit Singh himself appeared as CW3 and also examined Bihari Lal as CW1 and Rulia Ram as CW2. Documents tendered in evidence on behalf of the complainant were Exhibit C3 (certified copy of order dated 4.8.2008), Exhibit C4 (certified copy of statement), Exhibit P2 (certified copy of petition/application under Order 39 Rule 2-A CPC and photographs Mark X1 to X4).

4. Statement of the accused under Section 313 of Cr.P.C. was recorded and the incriminating evidence was put to him. In defence, accused/respondent examined DW1 Jagat Singh. Documents tendered in defence evidence were mark 'X' i.e. application addressed to SSP, compromise mark 'Y', compromise dated 26.10.2008 mark 'Z', report dated 29.10.2008 mark 'ZA', copy of order dated 4.8.2008, Exhibit D1, copy of order dated 5.12.2008, Exhibit D2, copy of complaint mark 'ZB', copy of demarcation dated 7.12.2007 mark 'ZC', demarcation report dated 24.3.2008 mark 'ZD', fard jama-bandi Exhibit D3 and khasra girdawari, Exhibit D4.

5. After hearing both the parties and having gone through the record of the case, the trial Court has given benefit of doubt to accused Amar Singh and he stands acquitted vide judgment

dated 26.7.2012. It is against such brief factual backdrop that the instant application seeking leave to file appeal has been filed.

6. Learned counsel appearing for the applicant has argued that the trial Court has not appreciated the complainant's version in the correct perspective and the judgment of acquittal is based on conjectures and surmises. Further submitted that ownership of the land in question was duly proved on record in the light of documents, Exhibit P1, Exhibit C4 and Exhibit C3 and the statements of both the eye witnesses would clearly bear out that the accused/respondent had unlawfully gained entry into the land of the complainant with the aid of a tractor and had destroyed/demolished the 'wat'. It is argued that the trial Court has erred in not relying upon the statements of the eye witnesses to the incident that occurred on 22.8.2008 and their version had been dis-believed only on account of some discrepancies that occurred during cross-examination. Yet another argument raised is that the trial Court has given undue weightage to the fact that accused Amar Singh had filed a civil suit for possession against the complainant/applicant in respect of the land in question as such suit had been instituted only after lodging of the complaint and as such, was an afterthought.

7. I have heard learned counsel for the applicant at length and have also perused the original records that had been requisitioned.

8. Learned counsel for the applicant does not rebut the factual aspect that the complainant was not an eye witness to the alleged occurrence of encroachment upon his land by the accused

on 22.8.2008. In support of his allegations, complainant examined CW1 Bihari Lal and CW2 Rulia Ram. Statements of the complainant as well as CW1 and CW2 would show that the registration number of the tractor that had allegedly been used by the accused for ploughing the land of the complainant has not been mentioned. To the contrary, during cross-examination, the afore-noticed CWs have stated that accused Amar Singh neither owns any tractor nor does he know how to drive a tractor. That apart, upon due appreciation of evidence adduced on record, the trial Court has observed that the complainant has not brought on file any demarcation report which would show that the accused had encroached upon his land comprised in khasra Nos.1131, 1053 and 1054 as reflected in jama bandi, Exhibit P1. Trial Court has also rightfully observed that as per jama bandi, Exhibit P1, complainant Harjit Singh was not the exclusive owner in possession of the khasra numbers. There were other co-sharers in the khasra numbers as shown in column No.4 of the jama-bandi. None of such co-sharers was examined by the complainant. In the considered view of this Court, the trial Court has taken the correct view in recording a judgment of acquittal and the same is based on cogent and valid reasoning.

9. Even otherwise, it is a settled proposition of law that whenever two views are possible, the view which favours the accused is to be followed by the Court. An order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so.

10. In the facts of the present case, learned counsel has

not been able to demonstrate that the trial court has ignored evidence or mis-read the material evidence or has ignored material documents.

11. For the reasons recorded above, this Court has no hesitation to conclude that neither any patent illegality nor perversity has occurred while recording the judgment of acquittal. No case for interference has been made out.

12. Resultantly, the instant application under Section 378 (4) Cr.P.C. seeking leave to appeal against the impugned judgment stands dismissed.

July 23, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)