

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. A-1081-MA of 2013 (O&M)
Date of Decision: 23.02.2015.**

Ram Chander

.....Applicant

Versus

Nathi Ram and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.S.Mamli, Advocate
for the applicant/appellant.

Mr. Parminder Singh, Advocate
for the respondents.

SABINA, J.

Respondents had faced trial in a complaint filed by the complainant under Sections 427 and 506 of the Indian Penal Code, 1860. Trial Court vide order dated 10.09.2013 ordered the acquittal of the respondents of the charge framed against them. Hence, the present application under Section 378(4) of the Code of Criminal Procedure, 1973 praying for leave to appeal by the applicant-complainant.

I have heard the learned counsel for the applicant as well as counsel for the respondent and have gone through the record available on the file carefully.

Case of the applicant, in brief, is that the complainant was the co-sharer along with the respondents qua the property in

question. There was a water course running in the property in question for the last more than 30 years. Complainant-applicant had installed a tube well in khasra No.7 of rectangle No.50. Respondents did not want the land to be partitioned and they started harassing the applicant. On 01.06.2006 all the respondents dismantled the water course in question. Complaint was filed before the police for taking action against the respondents but the police did not take any action against the respondents. Hence, the complaint in question was filed by the applicant.

Trial Court while ordering the acquittal of the respondents has observed as under :-

“The significant thing to notice herein is that the present complaint was being instituted on 18.08.2006 with specific allegations that he had made an application dated 03.06.2006 to S.P.Kurukshetra which was registered in the register of S.P.Office, Kurukshetra on 05.06.2006 but no action has been taken. The complainant while appearing in the witness box relied contents mentioned in complainant Ex.C1/C5. However, from careful scrutiny of contents mentioned in complaint Ex.C1, it is revealed that complainant had gone alone to the field on 01.06.2006 in noon and at that time Nathi Ram, Jai Kumar Verma were present with whom the alleged incident took place. Complainant rescued his life by fleeing from spot. He admitted in his complaint Ex.C1 that challan under Section 107/151 Cr.P.C. over dispute

of Khal was presented against complainant and accused No.1 Nathi Ram. The allegations levelled in the complaint is not found true and genuine because complainant neither uttered even a single word against Jai Kumar in his entire complaint nor can be able to explain as to how Subhash Chand son of Desh Raj, r/o village Sambli remained present at the time of alleged incidents rather it is apparent on face of record that he improved or manufactured entire story after changing previous version as mentioned in complaint Ex. C1 and involved Ram Kumar and Ram Saran sons of Nathi Ram in the present complaint despite they were never remained present at the time of incident on 01.06.2006 in the noon. The complainant changed his stand in his own style just to shift undue burden upon innocent persons who never raised any altercation with complainant. It is worth mentioning here that when Subhash Chand was not present at the time of incident as per contents mentioned in complaint Ex.C1/Ex.C5 then as to why he was being procured as witness relating to alleged scene of crime. No doubt, Subhash Chand is the brother in law of complainant but if he was not present at the time of incident on 01.06.2006 in noon then question to believe his version does not arise because he himself stated that on 01.06.2006 at about 4/5.00 P.M. he in the company of his brother-in-law Ram Chander went to field where Nathi

Ram and his two sons were dismantled water drain. Nathi Ram was plying tractor and when his brother-in-law (Jija) stopped them not to do so then they said that they will destroy water course. This statement of CW2 Subhash Chand is completely untrustworthy, accredit worthy and unreliable, inconsistent and uncorroborated with the contents mentioned in complaint Ex. C1 and Ex.C5 on file. So his statement cannot be believed in eyes of law in any manner. So far as the statement of CW1 Ram Chander is concerned, he himself changed his stand by involving sons of Nathi Ram and leaving main accused Jai Kumar as per allegations levelled in the complaint Ex.C1 and Ex.C5 on file. There is also not proved any MLR nor photographer has been examined. Complainant has already lost his case upto Hon'ble High Court as per judgment Ex.D1 to Ex. D3. The complainant has no prerogative right in use of joint property rather every co-sharer has right to enjoy fruits of joint property in a husband like manner. For the sake of discussion, if accused would dismantle any water drain/khal then they would certainly suffer loss for the same because they have also right to enjoy fruits of joint property in a husband like manner. It is also worth mentioning here that complainant has failed to establish possession over any specific and in joint property in which he was irrigating through alleged water drain/khal. Therefore, it

may easily say that statement of complainant is not credible, reliable and trustworthy to the alleged commission of crime in eyes of law. Resultantly, this court has no hesitation to say that prosecution can not be able to prove facet of charges against all accused facing trial by way of coherent deposition of testimonies beyond shadow of reasonable doubt.”

The reasons given by the Trial Court while ordering the acquittal of respondents are sound reasons. It has been noticed by the Trial Court that in pursuance to the complaint filed by complainant-applicant before the police, proceedings under Section 107/151 Code of Criminal Procedure were initiated. It has been further noticed by the Trial Court that while filing the complaint in question, applicant had changed his version given in the complaint filed before the police Ex.C1. Further the complainant-applicant had failed to prove on record the medical opinion and photographs which were allegedly taken at the spot. Admittedly, the parties are co-sharers qua the suit land and the learned Trial Court rightly came to the conclusion that the respondents would not have dismantled the water course as it would have caused loss to them also.

Their lordships of the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, held that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court.

A Division Bench of this Court in **State of Punjab v. Hansa Singh, 2001 (1) RCR (Criminal) 775**, while dealing with an

appeal against acquittal, has opined as under:

“We are of the opinion that the matter would have to be examined in the light of the observations of the Hon'ble Supreme Court in *Ashok Kumar v. State of Rajasthan*, 1991(1) SCC 166, which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.”

To the same effect is the ratio of the judgments of the Supreme Court in ***State of Goa v. Sanjay Thakran* (2007) 3 SCC 755** and in ***Chandrappa v. State of Karnataka*, (2007) 4 SCC 415**.

Similarly, in ***Mrinal Das & others v. The State of Tripura*, 2011 (9) Supreme Court Cases 479**, the Supreme Court, after looking into various judgments, has laid down parameters, in which interference can be made in a judgment of acquittal, by observing as under:

“8) It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re-appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or

condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are “compelling and substantial reasons”, for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the

materials placed”

No ground is made out to grant leave to file an appeal.

Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 23, 2015
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