

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.A-196-MA of 2013 (O&M)
Date of decision: September 08, 2015

Sukhwinder Singh

...Applicant

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manish Kumar Singla, Advocate
for the applicant.

Ms.Simsi Dhir Malhotra, Deputy Advocate General, Punjab
for the respondent-State.

Mr.Tarunveer Vashist, Advocate
for respondents No.2 to 8.

INDERJIT SINGH, J.

Applicant-Sukhwinder Singh has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against State of Punjab and other respondents, challenging the judgment dated 05.01.2013 passed by learned Addl. Sessions Judge, Sangrur, vide which the appeal filed by the accused-respondents was allowed and the judgment of conviction and order of sentence dated 19.07.2011 passed by learned JMJC, Sangrur, was set aside.

It is stated in the application that appeal has also been filed along with this application, which is likely to succeed on the grounds taken therein. Learned Addl. Sessions Judge, Sangrur has

set aside the well reasoned judgment of conviction and order of sentence dated 19.07.2011 passed by learned JMIC, Sangrur. The reasons are wholly erroneous and unsound and learned Addl. Sessions Judge, Sangrur, has totally erred in law while not taking note of the material evidence available on the record.

As this case is a State case on the basis of registration of the FIR, therefore, the provision under Section 378(4) Cr.P.C. will not apply in this case as it is not a complaint case. Therefore, the present application is not maintainable. However, under Section 372 Cr.P.C., the victim/complainant has the right to file appeal. Therefore, the present appeal is maintainable under Section 372 Cr.P.C. and notice of motion already issued is taken as issued in the appeal.

The brief facts of the case are that on 07.07.2007, ASI Mandhir Singh recorded the statement of Sukhwinder Singh, who mainly stated that his father along with his aunt had inherited 66 bighas 5 biswas of land of their maternal parents. After the death of his father, he along with brother and mother inherited that land. They have sold 14 bighas of land out of that land. Remaining 18 bighas 4 biswas land was left. They had given that land on lease to their uncle Mohinder Singh. However, Mohinder Singh stopped paying the lease amount. When they demanded back their land, he flatly refused to give their land back. Then they filed a suit for partition in the Court of Tehsildar, Sangrur and on 28.02.2007, the Tehsildar passed the order of partition. In compliance of that order, Halwa Patwari Balwinder Singh and Kanungo Narinder Singh reached the spot and they

partitioned the land in the presence of witnesses and both the parties and handed over the possession to them at the spot. Complainant further stated that after partition, land measuring 18 bighas 4 biswas fell to their share and similarly Mohinder Singh and others got possession of land which had fallen to their share by way of partition. Also a joint pahi measuring 8 biswas was retained for access to the partitioned land. It is also stated by the complainant that on 07.07.2007 at about 6.00 A.M., when he reached his fields where Bajra crop was sown, he saw Mohinder Singh, Charna Singh, Bharpur Singh, Parnma, Bittu Singh, Jagtar Singh, Gobhi Singh and 5-7 others persons were destroying his crops of *bajra* with their tractors. They had also ploughed the joint pahi and were sowing paddy.

After necessary investigation, challan was presented against the accused and they were charge-sheeted under Sections 447, 427, 148 and 149 IPC. Prosecution examined PW-1 Ravinder Singh, PW-2 Bant Singh, Photographer, PW-3 Narinder Pal Singh, Kanungo, PW-4 Pawan Kumar, Clerk to DTO office, PW-5 Sukhwinder Singh, PW-6 Inder Pal, PW-7 Balwinder Singh, Patwari and PW-8 ASI Mandhir Singh. In defence, accused examined DW-1 Karnail Singh and DW-2 Nachhattar Singh.

Learned JMJC, Sangrur, after appreciating the evidence, convicted the accused-respondents under Sections 427 and 447 read with Section 149 IPC and sentenced them accordingly. An appeal was filed by the accused-respondents and learned Addl. Sessions Judge, Sangrur accepted the appeal vide judgment dated 05.01.2013

and set aside the judgment and order passed by learned JMJC, Sangrur.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that learned Addl. Sessions Judge, Sangrur, after appreciating the evidence, reached to the conclusion that there is no documentary evidence on record to show the delivery of possession to the complainant. He further discussed that there is only one document i.e. PW3/A, which is photocopy of one document Naksha Khatauni partition and in that document, there is no recital with regard to delivery of actual physical possession to the parties of the partition proceedings nor this document is signed or thumb marked by any of the party. Rather, in the remarks column, there is note that *naksha* is rejected and that note is of 17.10.2006. Therefore, in these circumstances, learned Addl. Sessions Judge, Sangrur, reached to the conclusion that this document nowhere shows that possession has been given to the complainant in the partition proceedings through this document. Learned Addl. Sessions Judge, Sangrur also discussed the revenue record including jamabandis and khasra girdawaris. As per the jamabandis and khasra girdawaris, at that time Dalip Kaur co-sharer was stated to be in possession. In the khasra girdawari of the year 2009-2010, Dalip Kaur etc. are shown in possession. Balwinder Singh, Patwari has admitted in cross-examination that order of partition was set aside by the Commissioner.

The copy of that order passed by Commissioner Patiala Division,

Patiala is Ex.D1. So, in these circumstances, the Court reached to the conclusion that the prosecution has failed to prove on record that complainant was in actual physical possession of the disputed property. The Court also discussed that complainant admitted possession of Mohinder Singh etc. over the disputed land, therefore, it was for the prosecution to prove that how and when Mohinder Singh and others were dispossessed and how the complainant party came into the possession. The Court also found that no neighbour has been examined to prove that complainant cultivated *bajra* crop nor revenue record has been proved on the file to show cultivation of *bajra* crop by the complainant.

In view of the above discussion, I find that the judgment dated 05.01.2013 passed by by learned Addl. Sessions Judge, Sangrur, is correct, as per law and evidence and does not require any interference from this Court and the same is upheld.

Therefore, finding no merit in the present appeal, the same is dismissed.

September 08, 2015
Vgulati

(INDERJIT SINGH)
JUDGE