

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1102-MA of 2014 (O&M)

Date of decision : July 13, 2015

Hanuman

... Appellant

vs.

Net Ram and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Jagjit Gill, Advocate
for the appellant.

Surinder Gupta, J

This is an appeal against the judgment of trial court dated 13.6.2014 passed in Criminal Complaint No.211-1 of 2007, acquitting the respondents for offence punishable under Sections 382/447/148/149/506 IPC.

As per complainant, he is in possession of the land comprised in Khewat No.2389, Khatauni No.2838, Rect. No.295, Killa No. 21 (8-0), Rec. No.342 Killa No.1 (8-0), 10 (8-0) kitte 3 area measuring 24 kanals and khewat/khatauni No.2390/2839 Rect. No. 294, Killa No.17/2 (3-4), 24/1 (4-0) kitte 2, area measuring 7 kanals 4 marlas and khewat/khata No.2393/2842 Rect. No. 244, Killa No.24/2 (4-0), 25 (8-0), Rect. No.343 Killa No.4 (8-0), 5 (8-0), 6 (8-0), 7 (8-0) kitte 6 area measuring 44 kanals situated within the revenue estate of village Chautala, Tehsil Dabwali, District Sirsa as Gair Maurusi tenant on Batai 'Tehai' for the last many years. In the year 2005 his son had sown wheat and mustered crop on the suit land and the accused persons have no right, title or interest on the same.

On 17.4.2005 the complainant along with his son had gone to his field and found that respondent armed with deadly weapon had brought a combine, two tractor trolley and a jeep to the spot and were cutting the crop in his field with combine. When the complainant tried to stop them from cutting his crop, they threatened him and his son and pointed gun towards them. The matter was reported to the police at Police Post Chautala, but no action was taken. An application was submitted before Deputy Superintendent of Police, Mandi Dabwali, on the basis of which

FIR No.45 dated 18.4.2005 for offence punishable under Sections 382, 447, 506, 148, 149 IPC was registered at Police Station Sadar Dabwali.

After investigation, the police submitted cancellation report. The petitioner filed protest petition which was registered as complaint and after recording preliminary evidence, respondents were ordered to be summoned for offence punishable under Sections 382, 447, 148, 149 IPC vide order dated 31.5.2010.

In pre-charge evidence, the complainant examined himself as PW-1, his son Satpal as PW-2 and Balwant Rai Patwari as PW-3.

After pre-charge evidence, the respondents were charge sheeted for offence punishable under Sections 148, 447, 382 read with Section 149 IPC.

The trial court acquitted the accused giving them benefit of doubt on the grounds as follows :-

- i) In the application Ex.P1 moved by the complainant to Deputy Superintendent of Police, Dabwali, it was nowhere mentioned that his son had accompanied the complainant to the place of occurrence. Statement of Satpal son of complainant was discarded on the ground that he had been cited as a witness at later stage.
- ii) The complainant examined Balwant Rai Patwari to prove his possession over land in dispute, who has stated that possession of Satpal son of the complainant is recorded as *Gair Maurusi Mujara* in the revenue record but at the spot it is Pappu son of Kishan who is cultivating the land on contract basis under the ownership of Dilawar Singh. The testimony of Balwant Rai Patwari had gone un-rebutted and no request was made to declare him hostile. The trial court further observed even in his report Ex.DD, made to the police, on the basis of which cancellation report was filed Balwant Rai had stated that the land in dispute was in possession of Pappu.
- iii) Pappu son of Kishan Lal appeared as DW-2 and produced on record receipts Ex.DW2/A to Ex.DW2/E

issued by Dilawar Singh owner of land in order to prove his possession over the land in dispute.

On the basis of above mentioned discrepancies and lacunas in the case of complainant, the trial court reached the conclusion that the complainant has failed to prove guilt of the accused to make out offence punishable under Sections 382/447/148/149 IPC.

Learned counsel for petitioner submits that respondents have formed a gang and committing such type of crime and many criminal cases have been registered against them. He further submits that the testimony of Patwari beyond record was not admissible in evidence.

Perusal of paper book shows that there is no evidence produced on record to show that the respondents are involved in any other criminal case. Even if any case is registered against them, it is of no help in reaching the conclusion about their involvement in the instant case. Secondly, Balwant Rai Patwari, much prior to his statement recorded in this case, had given report Ex.DD to the police stating that the land in dispute was in possession of Pappu son of Krishan Lal. That report was the part of the cancellation report submitted by the police and was well within the notice of the petitioner. Testimony of Patwari Balwant Rai, as such, cannot be discarded on the ground that the same is beyond the documentary evidence.

On perusal of paper book, judgment of the lower court and the facts discussed above, I find no illegality or infirmity of law and fact in the judgment of the trial court calling for interference in appeal.

This appeal has no merits, consequently the same and the application under Section 378 (4) Cr. P.C. seeking leave to appeal are dismissed.

(Surinder Gupta)
Judge

July 13, 2015
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