

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-1610 of 2014

Date of Decision : 21.04.2015

Surinder Kumar Verma

.....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Rakesh Verma, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. AG, Haryana.

Mr. R.K. Sharma, Advocate
for respondents no. 2 to 7.

R.P. Nagrath, J. (Oral)

The instant petition is filed under Section 482 Cr.P.C. seeking to set aside impugned order and judgment dated 19.11.2010 and 23.11.2010, respectively passed by the trial Court in Complaint Case no. 415/1 (Annexure P-2) and impugned judgment and order dated 16.11.2013 passed by learned appellate Court in Criminal Revision No. 87 of 2010, Criminal Appeal No. 7 of 2010 and Criminal Appeal No. 86 of 2010 (Annexure P-3).

The challenge by the petitioner is to the acquittal of all the respondents of the charges framed against them.

Learned trial Court acquitted all the accused persons except Shanti Devi-respondent no. 3 who was convicted under

Sections 452 and 506 of Indian Penal Code (IPC). The learned trial Court sentenced Shanti Devi to undergo simple imprisonment of one month and to pay a fine of ₹ 250/-, in default to undergo simple imprisonment of 10 days under Section 452 IPC. She was also sentenced to undergo simple imprisonment of one month under Section 506 IPC. Both the sentences were to run concurrently.

The controversy mainly revolves around the factum of possession of the house in question. The petitioner-complainant claims the house to have been purchased by his son Vinay Verma by registered sale deed dated 19.01.2000, Ex. CW-1/A. This sale deed was executed by Lalit Vikram who allegedly purchased the house from Shanti Devi through her alleged attorney Sanjay Bhasin.

I have heard learned counsel for the parties, perused the judgments of both the courts below and the paper-book.

Shanti Devi now stands acquitted by the learned appellate court vide judgment dated 16.11.2013 (Annexure P-3).

Three appeals were filed before the learned appellate court, one filed by Smt. Shanti Devi against her conviction, another by complainant-petitioner to challenge the acquittal of rest of the accused, and 3rd appeal against acquittal of Shanti Devi against of the other offences. The petitioner also filed criminal revision against the inadequance of the sentence. All the three appeals and the criminal revision were decided by a common judgment (Annexure P-3).

Learned counsel for the petitioner, vehemently, contended that the Civil Court has returned the finding of possession in favour of

the son of petitioner on the basis of sale deed and therefore, the appellate Court was quite wrong in the observations that possession of the property has not been proved to be with Vinay Verma. The above contention cannot be accepted as the matter with regard to possession of the house is still pending between the parties in RSA No. 1746 of 2012 before this Court in which notice of motion was issued on 07.11.2012 and in the meanwhile executing court was directed to adjourn the hearing.

It would be quite significant to note that all the witnesses of the petitioner-complainant admitted the continuous possession of Shanti Devi over the property in question even though there was a sale deed dated 19.01.2000, executed in favour of Vinay Verma. If that be so, there was no scope of even recording conviction of Shanti Devi under Section 452 IPC.

Learned appellate Court has properly analyzed the evidence led in the case. The observations of learned appellate Court are reproduced as under:-

“9.The complainant has alleged that on the said date, a wrong FIR No.31 dated 31.1.2000 had been registered against the complainant and his son Vinay Verma and on the said date the complainant and his son Vinay Verma had been confined to the Jail of Police Station Mahesh Nagar and thereafter all the accused armed with deadly weapons entered in their house bearing

No.7, Aggarsain Nagar where the wife of the complainant Luxmi Devi along with children and father-in-law of the complainant were present and the accused beaten them and forcibly evicted them and thus committed the alleged offence. It is the case where the incident took place on 31.1.2000. Admittedly, a case FIR No.31 dated 31.1.2000 had been registered against the complainant and his son Vinay Verma. The complaint itself speaks that they were confined at Jail of Police Station Mahesh Nagar on the date of occurrence. In the instant case the complainant and his son Vinay Verma and Luxmi Devi were examined to prove their case along with documents mentioned above. The complaint itself speaks that the complainant and his son Vinay Verma were not present at the time of alleged occurrence. More over the complainant and Vinay Verma admitted in their cross-examination that they were not present at the time of committing the alleged offence. Apparently they are not the eye witness of the occurrence. It is also apparent on record that the occurrence took place on 31.1.2000 and the present complaint has been filed on 12.12.2000 after the expiry of more than ten months and said delay is not properly

explained. The judgment and order under challenge perused which speaks that the appellant Shanti Devi was held guilty on account of this fact that the document Ex.CW1/A sale deed dated 19.1.2000 speaks that Vinay Verma took the possession of the house in question from Lalit Vikram. It is to be seen whether Shanti Devi was in actual possession of the house in question or Vinay Verma was in actual possession of the house in question. It is not disputed that Shanti Devi was owner in possession of the house in question earlier and it seems that she executed the General Power of Attorney dated 11.3.1994 Ex.CW1/C in favour of Sanjay Bhasin who further alienated the property in question in favour of Lalit Vikram on 23.3.1994 in view of the document Ex.CW2/A and subsequently Lalit Vikram sold the same to Vinay Verma in view of the document Ex.CW1/A dated 19.1.2000. Meaning thereby Vinay Verma was not in the picture earlier to 19.1.2000. The incident took place on 31.1.2000 and on that day the case FIR No.31 dated 31.1.2000 was got registered against the complainant CW1 and his son Vinay CW2 who were confined at Jail of Police Station Mahesh Nagar. No doubt, in the said circumstances, they are

not the eye witness of the occurrence, if any. The parties are also on civil litigation with each other. In view of the document Ex.CW1/A Shanti Devi filed a civil suit against the complainant etc. wherein status quo order was passed on 14.6.2000. Except the document of sale deed dated 19.1.2000 Ex.CW1/A nothing came into notice that the complainant or his son had taken the actual possession of the property in question such as no document of electricity bill, water bill etc. are on the file. Here it is important to discuss the reply filed by the SH0 Police Station Mahesh Nagar in Crl. Misc. No. 10956 of 2000 Ex.CW2/B before the Hon'ble High Court which speaks that the possession of the property in question was actually with Shanti Devi while the sale deed Ex.CW1/A speaks about the possession of Vinay Verma son of Surinder Kumar. No doubt, the case FIR No.31 dated 31.1.2000 was quashed in Crl. Misc. No. 10956 of 2000 in view of the order Ex.CW2/B but it has no effect on merit. CW1 Vinay Verma and CW2 Surinder Kumar admitted this fact that at the time of occurrence they were not present at the spot as they were confined at Jail of Police Station Mahesh Nagar. They also admitted that they are deposing in the case on the

basis of the facts narrated to them by Luxmi Devi. Meaning thereby, their evidence is hearsay evidence. Except the family member of the complainant, there is no independent evidence on record. Luxmi Devi nowhere made any complaint to the police and even after the considerable period no medical evidence is on the file. Luxmi Devi admitted this fact that on the day of occurrence Lalit Vikram was not present. She deposed on oath that number of neighbourers gathered at the place of occurrence but no one was examined. She admitted this fact that the accused No. 1 to 6 are residing in the house No.7 Aggarsain Nagar, Ambala Cantt. She denied this fact that the house in question contains the electricity meter with the name of Shanti Devi, however, nothing came into notice that any electricity meter and water connection etc has been installed in the house with the name of any family member of the complainant. CW1 Vinay Verma and CW2 Surinder Kumar also admitted the possession of Shanti Devi upon the house in question but took the plea that said possession is illegal. Vinay Verma admitted this fact that the construction was raised upon the land in question by Shanti Devi. Luxmi Devi admitted this fact that the house was

belonging to Shanti Devi earlier to 1994, however, the same was in the shape of Khola. She also admitted this fact that they had filed a suit against Luxmi Devi for taking the possession of the house in question which means that complainant were out of possession. Luxmi Devi also admitted this fact that the house in question was constructed by Shanti Devi. Nothing came into the notice that who caused the injury and to whom specifically. All these discussions made above, speaks that at the time of occurrence, if any, the dispute of possession arose and whether the complainants were in actual possession of the house in question is doubtful. Rather, Shanti Devi is residing in the house in question even earlier to 1994 by raising the construction thereon. It does not seem justifiable that Shanti Devi who is having 60 years of age ejected the complainant and his family and thereafter again took the possession of the house, hence, the quarrel took place. Any how the above said circumstances leads doubt upon the version as alleged in the complaint. Holding the accused Shanti Devi guilty on the basis of sale deed dated 19.1.2000 does not seem justifiable when the circumstances nowhere leads to the facts that who

was in the actual possession of the house in question.”

When the evidence has been so meticulously examined by the appellate Court, there is no scope of interference in exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C.

It is also difficult to agree to the maintainability of petition under Section 482 Cr.P.C. as the appropriate remedy was the revision against the judgment of appellate court. No doubt against the order revision filed by the petitioner for seeking to enhance the sentence awarded to Shanti Devi-respondent no. 3 petition may be maintained under Section 482 Cr.P.C. but even for that there is no scope of interference after the findings of appellate Court are found to be quite in order.

The other contention of learned counsel for the petitioner is that in fact the appeal against the acquittal in the complaint case was maintainable before this Court and not the Sessions Court in view of the Full Bench judgment of this Court in **M/s Tata Steel Ltd. vs. M/s Atma Tube Products Ltd. and others, 2013(2) RCR (Criminal) 1005** decided on 18.03.2013. I would not entertain such a contention as no such ground of jurisdictional error was raised before the appellate court nor even in the instant petition. The appeals were filed before the Sessions Court in December, 2010 i.e. much before the date of judgment of this court in ***Tata Steel Ltd.'s case (supra)***. It is also a settled principle that for want of the competence of the Sessions Court to decide appeal, the judgment cannot be rendered

illegal unless the point was raised before the appellate Court or it has resulted in failure of justice. I find no ground for interference in the orders passed by the trial court as modified in appeal.

Dismissed.

April 21, 2015

jk

**(R.P. NAGRATH)
JUDGE**