

CRR No.1465 of 2003 (O&M) &
CRA-S-104-SBA of 2004 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRR No.1465 of 2003 (O&M)
Date of Decision:17.7.2015
RajbirPetitioner

Versus

Darshan Singh and others
...Respondents

(2) CRA-S-104-SBA of 2004
State of Haryana
.....Appellant

Versus

Darshan Singh and others
....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. R.N. Lohan, Advocate for the petitioner in CRR No.1465 of 2003.

Ms. Tanushree, DAG, Haryana for respondent No.8 in CRR No.1465 of 2003 and for the appellant in CRA-S-104-SBA of 2004.

Mr. Ashok Arora, Advocate for respondents No.1 to 5 & 7.

NAVITA SINGH, J.

1. A case was registered against the respondents by way of FIR No.109 dated 17.6.1992 of Police Station Uklana under Sections 148,427,447 and 506 read with Section 149 of the Indian Penal Code (IPC for short). They were acquitted by the trial Court on 18.3.2003. The State filed appeal against acquittal while the complainant filed a revision petition also challenging the acquittal.

2. Originally there were seven accused but later on respondent No.6 died. The case against the respondents was that complainant Rajbir had made a statement to the police that he along with Chhabil Dass, purchased agricultural land measuring 23 kanal 1 marla from Dhan Kaur of

his village and mutation was sanctioned on 6.9.1989. Possession of the land was given to them. On the night between 15 and 16.6.1992, he along with Chhabil Dass was present in their fields to guard the sunflower crop. At about 3.00 am on 16.6.1992, they heard the sound of a tractor and found Darshan Singh and Harpal ploughing the land in which cotton crop had been sown by the complainant party. The said person damaged the crop and in the meanwhile the other accused also came there armed with lathis and gandas and threatened to kill them.

3. Earlier the matter was tried by the Magistrate in view of the offences in the FIR but during trial, complainant moved an application for adding the offence under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act for short). Thereafter, the case was committed to the court of Sessions and the Special Judge, Hisar, who tried the respondents for the offences under section mentioned in the FIR and the offence under the Act.

4. The accused challenged the order regarding adding the offence under the Act but their petition was dismissed by this Court. Charge was framed against them under the Act as well and after trial they were acquitted.

5. It was argued by the complainant and the State counsel that the court below erred in acquitting the respondents though the case of the prosecution stood fully proved. It was contended that regarding the offence under the Act, investigation could not be conducted by the Deputy Superintendent of Police because it was during the trial that an application was moved by the complainant and the offence was added. The stage of investigation was already over. The plea that investigation was not conducted for the said offence by a Deputy Superintendent of Police was,

thus, not available to the respondents, especially when they had lost in this Court regarding addition of that offence.

6. Counsel for the complainant argued that purchase of land was made by him and Chhabil Dass in 1989 and mutation Ex.P3 was duly entered. The purchasers were in possession of the property and khasra girdawari Ex.P2 was in their names. The trial Court erred in holding that there were discrepancies in the statements made before the Magistrate and in the evidence recorded by the Special Judge and further that the evidence led by the prosecution was not trustworthy. The court below acquitted the respondents on grounds which were not strong enough.

7. On the other hand, counsel for the respondents argued that the incident took place allegedly at 3.00 am on 16.6.1992 but the complainant made statement before the police on 17.6.1992 at 2.40 pm. A DDR was registered regarding the incident on 17.6.1992 at 3.20 pm. There was a delay of 36 hours by the time the entry in the daily diary register was made. It was then contended that there was inordinate delay in filing the application by the complainant for adding the offence under the Act because the same was moved in August 1989. Such delay though may not be fatal but at least speaks about the conduct of the complainant. The Magistrate continued the proceedings till 1999 when the application was made for adding the offence under the Act. It was not that the complainant was not aware of his own caste earlier or the police was not aware that the provisions of the Act would be attracted because according to the complainant, the land was owned by him and he was a 'harijan' and his possession was being interfered with by the respondents.

8. Counsel for the respondents rightly argued that the complainant did not mention in the FIR that he was in possession of any particular

portion of the suit land nor he gave any khasra numbers in his possession. The respondents had become joint owners with the complainant after the purchase of land by the latter and unless the land was partitioned or there was evidence that seller had put the complainant party in possession of any specific khasra number, it could not be said that the respondents had trespassed in the land of the complainant, even if there was any such incident as alleged. A suit for permanent injunction was filed by the respondents against the other party for restricting the complainant and Chhabil Dass for taking possession of any specific khasra number without partition and the suit was decreed. At the time of the alleged incident, temporary injunction granted in favour of the accused persons was operative and the appeal filed by the complainant against the order of temporary restraint, was dismissed.

9. Though legally speaking the accused party should have filed a suit for partition and sought injunction therein for restraining the complainant from taking possession of any specific portion or khasra numbers but the validity of the civil litigation is not to be gone into here. It would remain a fact that an order of temporary injunction stood passed against the complainant and ultimately the suit was decreed.

10. Purchase of the land by the complainant from Dhan Kaur is not disputed though a suggestion was put to complainant Rajbir in the cross examination that he had purchased only 1 acre of land and not 23 kanals 1 marla as alleged by him. He denied the suggestion. Dhan Kaur had challenged the sale deed in favour of the complainant but her suit was dismissed.

11. The complainant said that the accused party had abused them at the time of occurrence but admitted that he had not so mentioned in the

FIR. He then went on to say that prior to the report Ex.P1 pertaining to this case, he had made a couple of complaints against the accused with the police regarding the same land but he did not produce any evidence before the court. He had also not proved before the Magistrate that forcible possession of the land was taken from the complainant and that he belonged to weaker section of the society.

12. The trial Court rightly appreciated the evidence and observed that the complainant while making his statement in court, stated that all the accused present in court were there but knew the names only four of them and not of the others. He stated that on the relevant day, he along with Chhabila and one Parkash had gone to the fields whereas Chhabil Dass (PW4) said that he along with Parkash and one more person had gone to the fields. Why he did not name the complainant was not explained. According to him, Darshan Singh and his son Jagbir started damaging the crop with a tractor. He did not name any other assailants. He simply stated that all the other persons were present in the court. From the statements of Rajbir and Chhabil Dass, false implication of the other persons cannot be ruled out.

13. It was also rightly observed by the court below that Chhabil Dass mentioned in the cross examination that accused might have damaged their crops whereas in his statement before the Magistrate, he deposed that Darshan Singh and his son had damaged their crops. He was, thus, not sure of what he wanted to say. No test identification parade regarding the other persons allegedly present was conducted. Complainant had identified only Darshan Singh and his son at the spot and the said two persons alone were named by Chhabil Dass. Why the other persons were

involved remained a mystery. One witness said that there was one tractor while the other said that there were two tractors.

14. The Investigating Officer said during his cross examination that he had interrogated about ten persons but surprisingly he did not record the statement of any of them. He did not even know the names of those persons. The investigation was also thus not upto the mark. The site plan at the spot was prepared by the Investigating Officer himself as per the information given by the complainant. The Patwari of the area was not called to find out whether any specification portion or khasra number was in possession of the complainant or not.

15. It is amply clear from the discussion made above that the trial Court did not err anywhere in not believing the prosecution case and acquitting the accused. Both the appeal and the revision petition are dismissed.

(NAVITA SINGH)
JUDGE

17.7.2015
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