

CRR-1613-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1613-2014 (O & M)
Date of Decision: 07.04.2015

Subhash Sapra

... Petitioner

Versus

Deepak and another

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 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. Saurabh Bhardwaj, Advocate, for
Dr. Sushil Gautam, Advocate, for the petitioner.

Paramjeet Singh, J.

Present criminal revision has been preferred by the petitioner against judgment dated 03.02.2014 passed by learned Sessions Judge, Gurgaon, and judgment dated 03.05.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby respondent No.1 had been acquitted in a case arising out of FIR No.17 dated 04.01.2006 registered under Section 384 IPC at Police Station City Gurgaon.

In nutshell, the case set up by the complainant as emanating from the record is to the effect that complainant reported to the police that he had gone to Government College, Sector-9, Gurgaon to submit his leave application. When he was coming out of the college complex, the youngsters who were sitting on a bike bearing registration No.HR-26-S-9305, stopped him and stated that "Sapra Sir, we will do

CRR-1613-2014

demonstration against you and will disrupt you to that extent that you might lose your job”. One of the youngsters started gathering others. Deepak put his arm around him and asked the complainant to deliver Rs.1,00,000/- in one hour. Later on complainant returned to his residence. After about half an hour, Deepak started making telephone calls for money from his mobile as well as landline phones bearing No.9868857185 and 5531251, respectively. The conversation was recorded by the complainant and one CD was prepared by him. The matter was reported to the police and on the basis of complaint, FIR in question was registered. On completion of investigation, challan was presented. Accused-respondents were arrested and were released on bail.

On the basis of preliminary evidence, accused-respondents were charge sheeted for the commission of offence punishable under Section 384 IPC vide order dated 12.10.2006 to which they pleaded “not guilty” and claimed trial.

To prove his case, the prosecution examined CPS Ranga, SDO MTNL as PW-1, complainant Subhash Sapra as PW-2, Babu Lal Gupta as PW-3 and Ramphal as PW-4.

Statements of the accused were recorded under Section 313 Cr.P.C. The accused denied all the incriminating circumstances appearing against them in the complainant's evidence and claimed to be innocent. However, accused-respondent did not lead any evidence in defence.

Vide impugned judgment dated 03.05.2012, the trial Court

CRR-1613-2014

acquitted the respondent of the charge. Against the judgment passed by learned trial Court, petitioner preferred appeal before the learned Sessions Judge, Gurgaon, which has been dismissed vide impugned judgment dated 03.02.2014. Hence, this criminal revision.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner has vehemently contended that judgments passed by both the Courts below are erroneous and perverse and not sustainable in the eyes of law. Learned Courts below have relied upon the faulty investigation by the investigating agency.

I have considered the contentions of learned counsel for the petitioner.

Perusal of record shows that to prove the guilt of the respondents basic ingredients of Section 384 IPC have not been fulfilled. As per the petitioner, on 02.01.2006 threat was advanced to him and demand was raised for delivery of Rs.1,00,000/- within an hour. The matter was not reported to the police on the same day and even on 03.01.2006, which shows that petitioner himself had not taken the alleged threat to be so serious. Courts below have rightly observed that FIR was got registered against Deepak on disclosing the name while making telephone call, therefore, the possibility that caller may be somebody else other than the accused, could not be ruled out. Moreover, prosecution witnesses have also not supported the prosecution version. Despite availing more than reasonable opportunities, prosecution failed

CRR-1613-2014

to conclude its evidence and same was closed by order of the Court.

Moreover, I am afraid, while exercising my revisional jurisdiction, I cannot re-appreciate the evidence. The basic object behind Section 401 of the Code of Criminal Procedure is to empower the high court to exercise the powers of an appellate court to prevent failure of justice in cases where the Code of Criminal Procedure does not provide for appeal. The power, however, is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to : a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision is being heard. In exercising the power of revision, which is discretionary, the court should always bear in mind the limitation that under the garb of exercising its powers of revision; it cannot exercise the power of appeal in the face of statutory prohibitions. This is not a case where an important piece of evidence has been left out from consideration by the courts below while deciding the case.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

April 07, 2015
R.S.

(Paramjeet Singh)
Judge