

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

CRR No.182 of 2015 (O&M)
Date of decision: 15.05.2015

Balwan

-----Petitioner (s)

V/s

Pawan Kumar & others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vikas Sharma, Advocate
for the petitioner(s).

HARI PAL VERMA, J.

Through the instant revision petition, the petitioner has challenged the judgment dated 19.8.2014, whereby learned Sessions Judge, Bhiwani has dismissed the appeal filed by the petitioner against the judgment dated 13.3.2013 passed by learned Additional Chief Judicial Magistrate, Bhiwani, acquitting the respondents-accused.

Briefly stated, FIR No.397 dated 8.12.2009 under Sections 427, 447, 506 IPC read with Section 34 IPC was registered at Police Station Tosham against the respondents-accused.

As per the case of the prosecution, on 8.12.2009, the complainant-petitioner Balwan Singh submitted a complaint against three persons namely Rishi Ram, Manjeet and one Pappal to SHO Police Station, Tosham with the allegations that the aforesaid persons are powerful persons and their land is situated adjacent to the land of the petitioner. In the night of 4.12.2009, these persons have destroyed the wheat crop of the petitioner with the help of JCB machine bearing registration No.HR-39A-5624. In the evening of 4.12.2009, when Bajrang, Mukesh and Mange Ram had gone to the fields, they (accused) were found digging their agricultural land. They abused them and quarreled with them. On the next day, when the petitioner asked them as to why they have destroyed their crop, the accused used filthy language and quarrel with him also and threatened him with dire consequences. The accused wanted to take possession of the land of the petitioner forcibly.

On the basis of the aforesaid complaint, the case was registered and the investigating machinery was put in motion. The accused were arrested. After recording their statements, as provided under Section 161 CrPC, the investigation was completed and challan was submitted in Court. Copy of the challan, as provided under Section 207 CrPC, was supplied to the accused. Finding *prima facie* case against the accused, charges were framed against the accused for offence punishable under Section 447, 427 and 506 IPC read with Section 34 IPC.

In order to prove their case, the prosecution has examined the complainant Balwan Singh as PW1, EHC Ikbai Singh as PW-2, HC Vijaypal I.Q. as PW3, Bajrang as PW-4 and closed its evidence by order of the Court.

The accused, when confronted with the allegations of the prosecution, they denied the incident and made statement under Section 313 CrPC. However, no evidence was led by them in defence.

PW-1 Balwan, the complainant, has made improvements about the facts, as stated by him in the complaint Ex.PW-1/A. In cross-examination, he has deposed that he is owner of the land on which the crop was destroyed by the accused persons. However, he failed to bring any record regarding his ownership over the land. He deposed that on the fateful day, only three persons namely Rishi Ram, Manjeet and Pappal were present at the spot. Similarly, PW-4 Bajrang, who is neighbor of the complainant, has deposed on similar lines as deposed by PW-1 Balwan. But in his cross-examination, he has submitted that the crop was not destroyed in his presence and he cannot tell as to who is the owner of the land.

Considering the entire evidence, the trial Court acquitted the accused of the charges against them. It has been held that firstly, the proof of ownership of the land, where the crop has allegedly been destroyed, is not forthcoming on the file of the prosecution and in absence of any specific demarcation report, it

was difficult to come to any conclusion that the land on which the crop which has been allegedly destroyed is owned and possessed by the petitioner. Moreover, PW-4 Bajrang has admitted, during his cross-examination, that the crop was destroyed in his presence and he has stated that he do not know who is in possession of the land on which the crop has been destroyed. Apart from the fact that the prosecution has failed to prove the possession over the land, there is delay in lodging the FIR with the concerned police. As per the case of the complainant, the incident took place on 4.12.2009, whereas the complainant has submitted the complaint on 8.12.2009. There is no plausible explanation for four days delay. In this manner, the trial Court has acquitted the accused of the charges framed against them vide judgment dated 13.3.2013.

Feeling aggrieved against the aforesaid order of acquittal dated 13.3.2013 passed by Additional Chief Judicial Magistrate, Bhiwani, the petitioner preferred an appeal which has been dismissed by learned Sessions Judge, Bhiwani vide judgment dated 19.8.2014.

It is against the aforesaid judgment passed by learned Sessions Judge, Bhiwani dated 19.8.2014, the petitioner has filed the present revision petition.

I have heard learned counsel for the petitioner.

Learned counsel for the petitioner has argued that in order to invoke Section 447 CrPC, the question of ownership is

not required to be gone into and even if, the petitioner, is held to be in possession of the land, Section 447 fulfills its requirements. He further argued that the Courts below have wrongly considered the statement of PW-4 Bajrang during cross-examination, wherein he has stated that 'crops are not destroyed in his presence and he do not know who is in possession of the land, on which the crops were destroyed'. The Courts below have wrongly observed regarding the proof of ownership of the land in question on which the crops have allegedly been destroyed, to say that the proof is not on file. No such evidence or even a suggestion has been given by the defence in this regard.

Similarly, learned counsel for the petitioner has further argued that in fact, there is no delay in lodging the FIR and delay, if any, the same has been caused on account of verification of the contents of complaint before registering the case. The police has made verification in the matter and thereafter, has registered the case.

The present case was registered on the complaint Ex.PW-1/A of the petitioner Balwan, wherein it has been alleged that on 4.12.2009, during the night time, the accused have destroyed the wheat crop standing in his fields with the help of JCB machine. In the evening of 4.12.2009, when Bajrang, Mukesh and Mange Ram went to the fields, the accused were found digging their agricultural land. It means that the occurrence has taken place in night of 4.12.2009 and none had witnessed the

occurrence. But when appeared in the witness box, PW-1 Balwan has stated that they came to know that accused Rishi Ram, Manjeet and Pappal were destroying their wheat crop with the help of a JCB machine and the accused Pawan was driving the JCB machine. When they stopped Pawan, he quarreled with the complainant. In this manner, the petitioner, PW-1, has exaggerated his version while appearing before the Court by saying that they had seen the accused persons destroying the crop in the fields, whereas, there is no such recitation in the complaint Ex.PW-1/A. Similarly, the petitioner while appearing as PW-1, has stated that the occurrence took place on 4.12.2009 at about 6.30 p.m. and he was present in the village at the time of occurrence. Thus, from the statement of PW-1 Balwan, it is clearly established that he was not present in the village at the time of occurrence and he has not seen the accused destroying the wheat crop in question.

Similarly, the other witness Bajrang, PW-4, has stated that on 4.12.2009, in the evening, the accused Rishi Ram, Manjeet and Pappal alias Ajay were destroying the wheat crop of the petitioner and were digging the earth. The said witness along with Balwan, Mange Ram and Mukesh went to the fields and tried to stop them from destroying the wheat crop, but they did not stop and quarreled with them. However, in his cross-examination, he has stated that the crop was not destroyed in his presence and it is only on the next morning, he found that the crop was damaged.

In this manner, there is apparent contradiction in the statement of PW-4 Bajrang as well.

Even the prosecution has failed to produce any proof of ownership of the complainant Balwan over the land in question. In his cross-examination, PW-1 Balwan has stated that the land in dispute is in his name, but he did not produce any proof to show his ownership over the land in question. He rather stated that he did not produce his ownership record before the police. Even PW-4 Bajrang also failed to tell the name of the owner of the land in question. In this manner, the complainant-petitioner has miserably failed to show his ownership and possession over the land in question and in absence of any documentary evidence, it cannot be said that the land in dispute is owned and possessed by the complainant and the crop destroyed by the accused actually belonged to the complainant.

Thus, both the Courts below, after appreciating the evidence on record, have rightly rejected the claim of the petitioner-complainant with regard to his ownership and possession over the land in question where the wheat crop has been damaged. Thus, no interference of this Court is warranted in the concurrent findings of fact recorded by both the Courts below, especially when there is contradiction in statement of material witness PW-4 Bajrang. It is settled law that the revisionary jurisdiction of this Court is very limited. Reference

may be made to a judgment of Hon'ble Apex Court in a celebrated judgment of **Ghurey Lal v. State of U.P.** 2008(10) SCC 450.

Therefore, no fault can be found in the impugned judgments passed by both the Courts below.

Accordingly, the present revision petition is dismissed.

Since the revision petition has been dismissed on merits, no further order is required to be passed in the application under section 5 of the Limitation Act for condonation of delay of 32 days in filing the criminal revision.

May 15, 2015
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(HARI PAL VERMA)
JUDGE