

Criminal Revision No.2930 of 2014

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

Criminal Revision No.2930 of 2014

Date of Decision: 17.07.2015

The Bhuna Co-op Credit and Service Society Ltd.

... Petitioner

Versus

State of Haryana and others

... 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: Ms. Savita Rana, Advocate, for the petitioner.

Paramjeet Singh, J.

Present criminal revision has been preferred by the petitioner against judgment dated 20.05.2014 passed by learned Additional Sessions Judge, Kaithal, and judgment dated 18.10.2010 passed by learned Chief Judicial Magistrate, Kaithal, whereby respondents No.2 to 5 have been acquitted in a case arising from FIR No.6 dated 12.01.2014 registered under Sections 457, 380 IPC at Police Station Siwan Kaithal.

In nutshell, the case set up by the complainant as emanating from the record is to the effect that on 12.01.2004 when Manphool Singh ASI alongwith other officials Head Constable Dalbir Singh and EHC Mahinder Singh was present at bus stand of village Kangthali, Krishan Gopal Secretary Bhuna Co-Operative Agricultural Society Limited

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moved an application alleging therein that they are having mini bank to store pesticides, weedicide, fertilizers etc. and he is working as Secretary in the said society. It is alleged that on the intervening night of 7/8 January, 2004 some person had stolen 23 carton i.e. 230 pockets of weedicide Marka Leader after breaking the window of the Mini Bank. They searched at their own level but no clue was found and prayed for taking legal action against the culprits and recovery of the case property.

On the basis of that application, formal FIR was registered on 12.01.2004 for the commission of offence punishable under Sections 457,380 of Indian Penal Code. Investigation was initiated. It is alleged that on 13.01.2004, on the basis of secret information, Desh Raj son of Mulakh Raj resident of village Kangthali was overpowered, who suffered disclosure statement and in pursuance of the disclosure statement, it transpired that he alongwith Inder Pal alias Titu son of Davinder Singh, Ravi Kumar son of Asha Ram and Sanuj son of Pardeep Kumar had stolen the weedicide from Bhuna on the intervening night of 7/8 January 2004 in a Maruti Car and they divided the weedicide amongst them. It is alleged that he had received five cartons. Similarly, other accused-respondents namely Inder Pal, Ravi Kumar and Sanuj were also having their respective shares. During the course of investigation, it was revealed that one Suresh Kumar son of Prem Singh was also involved in the theft. All the accused were arrested, who on interrogation, suffered disclosure statements on different dates. In pursuance of the disclosure statement recovery of 17 cartons and 6

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bottles was effected from different places as shown in the site plan. Rough site plans of the place of theft and recovery were prepared. Statements of witnesses under section 161 Cr.P.C. were recorded. After completion of usual investigation, report under section 173 Cr.P.C. was prepared and presented in the Court for trial.

Copies of challan were supplied to the respondents-accused free of costs as contemplated under section 207 Cr.P.C. Accused Sanuj Mehta son of Shri Pardeep Kumar was discharged vide order dated 2.8.2005 passed by the then learned SDJM, Guhla as no recovery was effected from him. Whereas the remaining accused-respondents No.2 to 5 were charge-sheeted for the commission of offence punishable under Section 411 of Indian Penal Code to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as eight witnesses namely Krishan Gopal Secretary as PW 1, HC Banarsi Dass as PW2, ASI Manphool Singh as PW3, SI Abhey Ram as PW4, ASI Raghbir Singh as PW5, Amar Singh Salesman as PW6, Suresh Kumar as PW7 and Rajinder Singh retired inspector as PW8.

Statements of respondents No.2 to 5 were recorded under Section 313 Cr.P.C. They denied all the allegations levelled against them and pleaded false implication. However, they did not lead any evidence in defence.

Vide impugned judgment dated 18.10.2010, the trial Court acquitted respondents No.2 to 5 of the charge. Against the judgment

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passed by learned trial Court, petitioner preferred appeal before the learned Additional Sessions Judge, Kaithal, which has been dismissed vide impugned judgment dated 20.05.2014. 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 failed to appreciate the evidence led by the prosecution.

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

Perusal of record shows that both the Courts below have rightly acquitted respondents No.2 to 5 as the prosecution has failed to prove that stolen property was recovered from their conscious possession and they were well aware of the fact that the property possessed by them was stolen one or they retained the same having reason to believe the same to be stolen property. To prove the guilty under Section 411 IPC it is incumbent upon the prosecution to produce the case property and identify the same in Court in order to connect the accused with the alleged offence. However, in this case prosecution has miserably failed to produce the case property and the case property produced in Court does not match with the case property allegedly stolen by respondents No.2 to 5. No independent witness was joined in the investigation.

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Moreover, I am afraid, while exercising revisional jurisdiction, This Court 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.

July 17, 2015
R.S.

(Paramjeet Singh)
Judge