

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3322-2014 (O & M)
Date of Decision: 16.07.2015.

Gurdeep Singh

... Petitioner.

Versus

Suba Singh 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: Mr. Achin Gupta, Advocate for the petitioner.

Paramjeet Singh, J.

Challenge in the present criminal revision is to judgment dated 08.07.2014 passed by learned Additional Sessions Judge, Faridkot whereby judgment dated 24.04.2013 passed by the learned Judicial Magistrate Ist Class, Faridkot has been upheld and accused-respondents have been acquitted of the charges levelled against them.

In brief, the facts relevant for disposal of instant revision are to the effect that the instant case was registered on a written complaint of complainant-Gurdeep Singh wherein he alleged that he is an agriculturist. He and his brother Baljit Singh are married and reside separately. His father Gurbachan Singh had died about 3-4 years ago. His mother Balbir Kaur resides with him. There was pahi measuring 15 karams in length and 6 karams in width in khasra No. 238, which abuts his residential house. Mander Singh and his sons Suba Singh and Jagdev Singh had blocked the pahi in question. His father Gurbachan Singh had filed a Civil Suit regarding the pahi in

question against Mander Singh and others, in the Civil Court, which was decided in favour of his father. Mander Singh's wife and his son Suba Singh had filed a case against the complainant and his mother Balbir Kaur and brother Baljit Singh in the Hon'ble Punjab and Haryana High Court, but the case was decided in favour of the complainant by the Hon'ble High Court, vide order dated 18.09.2009 and accused persons were directed to vacate the pahi in question. Mander Singh's wife Nasib Kaur had vacated the pahi in question as per order dated 18.09.2009 passed by Hon'ble High Court and the complainant party started using the pahi in question. That on 06.08.2010, he along with his brother Baljit Singh and other family members had gone to village Gill, District Ferozepur, to attend Bhog Ceremony. His son Harjinder Singh, aged about 18-19 years, was present in the house alone. At about 12.00 noon, his son Harjinder Singh told him on telephone that Suba Singh and Jagdev Singh along with other persons have started raising wall on the pahi in question. Upon receipt of information, he along with his brother Baljit Singh reached at the spot within one hour, where they found that Suba Singh, Jagdev Singh, Sarban Singh, Dara Singh, Janta Singh, Gogga, Budh Singh, Jagsir Singh son of Shingara Singh mason, Suba Singh son of Pritam Singh mason, Nachhattar Singh were present and they were handing over bricks and mud to the masons and both the masons were raising the wall. The complainant and his brother asked the accused party not to raise construction, but accused persons raised lalkara and they lifted brick bats in order to give beatings. The complainant intimated the panchayat about the incident, but accused persons had completed the wall and they had constructed shed also and thereby they had encroached the pahi in question. The efforts were made to effect compromise between the

parties, but the same could not succeed. The complainant reported that all the accused persons in furtherance of their common intention, have encroached the pahi in question by raising wall therein. On the basis of his statement, FIR No. 96 dated 10.08.2010 was registered. Investigation was set into motion. The accused were arrested. After completion of investigation, challan against the accused persons was presented before the Court.

In support of its case, the prosecution examined complainant-Gurdeep Singh as PW1, Baljit Singh as PW2, HC Aman Kumar as PW3, Iqbal Singh Patwari as PW4, Harjinder Singh as PW5 and SI Amarjit Singh as PW6. Thereafter, prosecution closed its evidence.

Statements of accused under Section 313 Cr.P.C. were recorded. All the incriminating evidence appearing against the accused was put to them. They denied the same and pleaded false implication. However, the accused did not lead any evidence in their defence.

The trial Court, vide judgment dated 24.04.2013 finding no prima-facie case against the accused persons, acquitted them from the charges levelled against them. Against that, complainant Gurdeep Singh preferred appeal before Additional Sessions Judge, Faridkot, who also upheld the judgment of acquittal. Hence, this criminal revision.

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

Learned counsel for the petitioner vehemently contended that the trial Court has wrongly acquitted the accused persons. Further contended that the acquittal of the accused by both the Courts below is a result of mis-reading and mis-interpretation of the evidence.

Therefore, the judgment dated 08.07.2014 passed by learned Additional Sessions Judge, Faridkot and judgment dated 24.04.2013 passed by learned Judicial Magistrate 1st Class, Faridkot are liable to be set-aside as the same are erroneous in law as well as against the evidence on record.

I have considered the contentions of learned counsel for the petitioner and perused the record.

The lower Appellate Court has rightly recorded that the complainant has failed to bring on file any cogent evidence to prove that he is in possession over the khasra No. 238. If Khasra No. 238 pertains to the Pahi then how the complainant party can be in exclusive possession over the khasra No. 238 and if so then question for entering into the property in possession of the complainant party does not arise. Learned Trial Court has considered Section 441 IPC in which definition of criminal trespass is given and has observed that possession must be actual possession of some person other than the alleged trespasser. If the actual possession is proved then commission of offence under Section 447 IPC can be said to be proved. But in the instant case the complainant is not in actual possession of the property, hence, the offence under Section 447 IPC cannot be said to have been committed. In the present case complainant Gurdeep Singh categorically stated in his statement as well as in his evidence that Khasra No. 238 is a Pahi and the said passage provides ingress and egress to his house and accused persons have raised wall and shed etc. on the said Pahi. It is also admitted fact that prosecution has examined PW4 Iqbal Singh Patwari, who produced copy of Jamabandi Ex. PE, which reflects that khasra No. 238 is gair mumkin pahi and said khasra number is public passage and said land belongs to Gram

Panchayat. PW4 Iqbal Singh Patwari further deposed that Khasra No. 238 belongs to Panchayat Deh and thus prosecution has failed to prove that the passage in question and khasra No. 238 is in possession of the complainant and his family members. PW2 Baljit Singh in his cross-examination has admitted that Pahi in question is a passage and the same is being used by the public at large and as such prosecution has failed to prove actual possession of the complainant and his family members over the Pahi in question. If for the sake of arguments it is admitted that accused persons have constructed the wall and shed etc. in the public passage in question, then as per the order dated 18.09.2009 passed by this Court, accused were directed to remove the same and in case of failure, complainant party would be at liberty to file contempt proceedings against accused persons as per law. The learned lower Appellate Court has rightly recorded that prosecution has failed to prove that accused persons extended any threat to the complainant or his family members, nor prosecution has been able to prove that any overt act was done by the accused persons. It has also been rightly recorded by the lower Appellate Court that the prosecution has miserably failed to prove the possession of the complainant over Pahi in question.

Moreover, I am afraid, while exercising my revisional jurisdiction, I cannot re-appreciate the evidence. This is not a case where an important piece of evidence has been left from consideration by the lower Appellate Court while deciding the case.

it is well settled that even if two views are possible on the appreciation of evidence available on record, the view taken by the lower Appellate Court while acquitting the accused must prevail and this Court should not substitute its own view for the view taken by the

lower Court.

For the reasons stated above and finding no compelling and substantial ground to interfere in findings of acquittal recorded by the Courts below, this petition becomes devoid of any merit and is dismissed in limine.

July 16, 2015.
kanchan

(PARAMJEET SINGH)
JUDGE