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

CRM-A-89-MA of 2015 (O&M)
Date of decision: August 16, 2016

Siksha Metha

.....Applicant

Versus

Naveen Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Davinder Bir Singh, Legal Aid Counsel
for the applicant.

A.B. CHAUDHARI, J (Oral)

Heard learned counsel for the applicant.

There is a challenge to the judgment and order dated 04.12.2012 of acquittal of the respondents for offences punishable under Sections 452, 427, 382, 506, 148 of Indian Penal Code, 1806 (for short 'IPC').

Learned counsel for the applicant states that the respondents are convicted for offences under Sections 323/34 IPC and were not sentence but released on probation. Assailing the finding of acquittal for offence under Section 452 IPC, he vehemently contended that there is evidence on record to show and rather that is the admitted position that accused persons had entered the house of the applicant and then committed the offence regarding assaulting etc. The learned trial Court with reference to the above submissions has found in Para-15 as under:-

“15. Undoubtedly, allegations against accused are that they trespassed into house of complainant Siksha Metha after having made preparation to cause hurt to her. Siksha Metha in her complaint asserted that all accused criminally trespassed

into her house and they were erecting tent in the passage. Disputed passage is made out from Ex.DB site plan admitted by Siksha Metha having been produced by Harbans Lal depicting passage to be out side of house of complainant. Even if, it is assumed that accused allegedly criminally trespassed into house of complainant, offence under section 452 of IPC is not constituted as Siksha Metha in her cross examination admitted that her husband and Harbans Lal inherited property at Dharampur from Mansa Ram. Property was not partitioned. Alleged family settlement had not seen light of the day. Moreover, site plan depicting exact place where accused criminally trespassed is on file. Siksha Metha testified that Harbans Lal, Naveen Kumar and Neeraj Kumar were erecting tent in passage and when she stopped them from doing so, scuffle took place. Scuffle in the passage can not said to be constitute as house trespass, as such, offence under Section 452 of IPC is not made out.”

For the above reasons with which I agree, I think the finding of acquittal for offence under Section 452 IPC recorded by the trial Judge is a possible finding on evidence and preponderance of probabilities and looking at the dispute about family settlement amongst the family members.

In that view of the matter, I think the finding of acquittal should not be interfered with in terms of the parameters in the matters of appeals against acquittal.

Dismissed.

(A.B. CHAUDHARI)
JUDGE

August 16, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No