

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

CRR No.2204 of 2014.
Decided on:-11.04.2016.

Kakka Singh.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Manvinder Singh Sidhu, Advocate
 for the petitioner.

HARI PAL VERMA, J.

Petitioner Kakka Singh son of Amir Singh, resident of village Saide Ke Naul, Tehsil and District Ferozepur has filed present revision petition against judgment dated 25.4.2014 passed by learned Additional Sessions Judge-III, Ferozepur whereby his appeal against the judgment dated 7.11.2011 passed by learned Judicial Magistrate 1st Class, Ferozepur, was dismissed.

Vide judgment dated 7.11.2011, learned Magistrate acquitted the accused, respondents No.2 to 4 herein, of the charge framed against them by giving them the benefit of doubt.

Briefly stated, an FIR No.148 dated 2.11.2005 under Sections 457, 380 and 411 IPC was registered against the respondents-accused at Police Station Mamdot, District Ferozepur. As per said FIR, on 2.11.2005 when ASI Nirmal Singh and other police officials were going for patrolling on a Government vehicle and were present at Chowk Mai Bholi, Mamdot, petitioner-complainant Kakka Singh came there. He got his statement recorded to ASI Nirmal Singh to the effect that he is resident of village Saide Ke Naul and is an agriculturist. They have constructed a room in their fields for keeping the material. They have kept 50 bags of DAP fertilizer in the room after obtaining the same from Lakho Ke Society. They have used 10 bags out of them for sowing the wheat crop and the remaining fertilizer was kept in the room. He came back to his home after locking the room. At about 8.00 a.m. he went to his field and noticed that lock of his room was broken. He went inside the room, counted the bags of fertilizer and found that 8 bags of fertilizer were missing.

Thereafter, the complainant went to Jagtar Singh Sarpanch, Kabal Singh Ex-Sarpanch and other respectable of the village. He reported the theft of fertilizer to them. They went to the spot and enquired the matter. When they reached the motor of Balvir Singh son of Shanker Singh, Rai Sikh, resident of Saide Ke Naul, the room was locked. There was fertilizer in the room. So they had suspicion that Harnam Singh, Balwinder Singh and Lakhwinder Singh sons of Balvir Singh, residents of village Saide Ke Naul had broken the lock of the room of complainant and stolen 8 bags of fertilizer. The complainant also stated that his name was

written with ink on the bags and he can identify the bags. Therefore, he requested for taking action against them.

On the aforesaid facts, a case was registered against the respondents-accused. The matter was investigated and Challan as provided under Section 173 Cr.PC was produced in the Court. As required under Section 207 Cr.PC, copies of Challan were supplied to the accused free of cost and charge under Sections 457, 380 and 411 IPC was framed against the accused to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses, namely, Kakka Singh as PW1, Kabal Singh as PW2, HC Bhagwan Singh as PW3, HC Jora Singh as PW4 and SI Nirmal Singh as PW5.

Thereafter, statements of respondents-accused under Section 313 Cr.PC were recorded wherein they denied all the allegations against them and pleaded their false implication. In their defence, they examined Rajesh Kumar Puri, Record Keeper as DW1, Ravinder Pal Singh, DRK, office of District and Sessions Judge, Ferozepur as DW2, Kulwant Singh as DW3, Santokh Singh as DW4 and Ravinderpal Singh, DRK, Judicial Record Room, Ferozepur as DW5.

Learned trial Court after considering the entire evidence had acquitted the respondents-accused of the charge framed against them vide judgment dated 7.11.2011.

Aggrieved with the same, the petitioner-complainant filed an appeal in the Court of Session, but the same was also dismissed by learned Additional Sessions Judge-III, Ferozepur vide judgment dated 25.4.2014.

It is in these circumstances, the petitioner has filed the present revision petition before this Court.

Learned counsel for the petitioner has argued that though the prosecution has fully proved its case against all the accused, but the Courts below did not consider the same. He prayed that the impugned judgments passed by the Courts below are liable to be set aside and the respondents-accused be convicted and sentenced accordingly.

I have heard learned counsel for the petitioner and perused the paper book.

Learned trial Court after considering the entire evidence has found that no witness has stated that they have seen the accused persons while they were lurking house trespass by entering in the room of complainant Kakka Singh after the hours of sunset and sunrise so as to establish the offence of theft. The complainant himself has stated that he named the accused persons due to enmity with them, meaning thereby, there is a clear admission that there was previous limitation pending between the complainant and accused. Further, the complainant has failed to prove any document that he had purchased the aforesaid fertilizer bags as these bags were easily available in the market. Further more, even ASI Bhagwan Singh as PW3 has stated in his cross-examination that the investigating officer has got recorded statements of 14 persons in his

presence, but no such statement of 14 persons is available on the file. It certainly creates doubt on the prosecution story. Admittedly, civil and criminal proceedings are pending between the parties. Therefore, it is established that the complainant has got the FIR registered because of an old enmity with the accused in the background. Similarly, the appeal against acquittal of the respondents-accused has been dismissed by learned Additional Sessions Judge, Ferozepur by holding that the trial Court has passed the judgment while appreciating the evidence on record.

Moreover, the scope of revisional jurisdiction is vested with limited powers. Hon'ble Apex Court in **Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423** while dealing with the scope of revisional jurisdiction, has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

There is concurrent findings given by the Courts below and learned counsel for the petitioner has not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

In view of the above, judgment dated 7.11.2011 passed by learned Magistrate as well as judgment dated 25.4.2014 passed by learned Additional Sessions Judge, Ferozepur are upheld and the present revision petition, being devoid of any merit, is dismissed.

April 11, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE