

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

CRR No.3625 of 2014.
Decided on:-20.05.2016.

Nafe Singh.

.....Petitioner.

Versus

State of Haryana and another

.....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. Raj Kapoor Malik, Advocate for the petitioner.

HARI PAL VERMA, J.

Petitioner Nafe Singh has filed the present petition impugning order dated 4.9.2014 passed by learned Principal Magistrate, Juvenile Justice Board, Kaithal whereby respondent No.2 Gulab Singh has been absolved from notice of acquisition framed against him under Section 148, 379, 447, 285 and 336 read with Section 149 IPC in case FIR No.120 dated 8.10.2012 registered at Police Station Sadar Kaithal.

Briefly stated, on 8.10.2012, the petitioner-complainant submitted a complaint to the police that they are 5 brothers having 16½ acres of land. He had filed a suit for his share in the land and the Khasra Girdawri of 2 acres land is in his favour. The said land has been cultivated by him and he has sown paddy crop in his land i.e. Killa No.25.

On 7.10.2012, the complainant had put the paddy crop in the said Killa after harvesting the same. At about 4.30 p.m. when the complainant was coming from Kaithal, he received a telephonic message from his son Amarjeet that his brothers Banta Singh, Tehal Singh, Dalel Singh, Falel Singh, Rattan Singh sons of Ajmer Singh, Kashmiri, Jassi Lal sons of Dalel Singh, Prem, Golu sons of Pirthi, Balkar son of Falel Singh, Joginder son of Falel Singh, Gulab son of Tehal Singh (juvenile in conflict with law), Satnam son of Santa Singh, residents of village Andhali along with 7-8 other persons having Gandasi in their hands had committed theft of paddy crop from his fields in a tractor make Model Ford.

Respondent No.2 Gulab Singh and Tehal Singh had taken away the paddy crop into the said tractor whereas remaining persons were standing on the way having weapons in their hands. On receiving this information, when the complainant came to Naib Singh on his motorcycle, he met Tehal Singh and respondent No.2 and they were having paddy crop in their tractor. They abused the complainant and thereupon, he fled away towards Dera. On moving ahead, he found that 2-3 Killas before Dera, Banta Singh having 7-8 persons were sanding there in the passage. Therefore, out of fear, the complainant did not go to Dera. It is alleged that the aforesaid persons committed theft of paddy crop weighing 70-80 Mun after trespassing into his fields.

On the basis of this information, the aforementioned FIR was registered. The stolen paddy was recovered and after completion of

investigation, report under Section 173 Cr.PC was prepared and presented in the Court. However, during investigation, Kashmir Singh, Falel Singh, Joginder Singh and Balkar Singh were found innocent whereas respondent No.2 Gulab Singh was found to be juvenile and as such, a separate final inquiry report qua him was filed before the Juvenile Justice Board.

Thereafter, copy of final inquiry report was supplied to the juvenile free of costs as envisaged under Section 207 Cr.PC. Respondent No.2 Gulab Singh was served with a notice of accusation under Sections 148, 285, 336, 379 and 447 read with Section 149 IPC on 23.5.2013 to which he pleaded his non-involvement and claimed inquiry.

In order to prove its case, the prosecution examined as many as 7 witnesses and thereafter evidence of prosecution was closed by order of the Board. When the material brought forward by the prosecution against juvenile in conflict with law was put to him, he denied the allegations levelled against him and stated that he has falsely been involved in the present inquiry.

Learned Principal Magistrate, Juvenile Justice Board, Kaithal vide dispositional dated 4.9.2014 while extending the benefit of doubt to the juvenile in conflict with law, absolved him from the notice of accusation framed against him.

It is in these circumstances, the petitioner-complainant has filed the present revision petition.

Learned counsel for the petitioner has argued that in order to prove version of the complainant, the prosecution has got examined as many as 7 witnesses and placed on record certain documents to prove involvement of respondent No.2 along with other accused, but learned Juvenile Justice Board has erred in law and, rather, taken a contrary view that the petitioner failed to prove exclusive possession of the land comprised in Killa No.25. The Board has framed wrong opinion that possession of the land comprised in the said Killa shall be determined by the civil Court in the suit pending between the parties.

Learned counsel for the petitioner has further argued that the Board has taken a contrary view and has wrongly relied upon document Ex.DA, the order passed by the Collector regarding correction of Khasra Girdawri of the land comprised in Killa No.25. The Board has lost sight of the fact that order Ex.DA passed by the Collector has not attained finality and appeal against the said order is pending. He has prayed for setting aside of the impugned order and conviction of respondent No.2.

I have heard learned counsel for the petitioner.

It is settled proposition of law that the revisional Court has very restricted jurisdiction to interfere in the order passed by the Court below. The Board has opined that the prosecution has failed to prove involvement of respondent No.2 in the commission of alleged crime beyond reasonable shadow of doubt. As per the prosecution version, petitioner-complainant Nafe Singh had sown paddy crop in Killa No.25.

On 8.10.2012 at about 4.30 /5.00 p.m., respondent No.2 along with several other persons trespassed into the said Killa after forming an unlawful assembly and committed theft of the paddy crop harvested by the complainant. Therefore, it was incumbent upon the prosecution to prove these facts beyond any reasonable shadow of doubt, but the same was not proved. The prosecution has also failed to prove that the petitioner-complainant was in exclusive possession of Killa No.25 from where paddy crop was allegedly stolen.

The Juvenile Justice Board has also observed that the case property i.e. paddy crop was not produced during the inquiry proceedings. It has not been established by the prosecution that respondent No.2 committed theft of paddy crop in the presence of complainant Nafe Singh. Rather, complainant Nafe Singh (PW2) has deposed that he had telephonically been informed about the incident. Thus, at the most, he is a hearsay witness and his evidence cannot be relied upon. Moreover, the other two eye-witnesses examined by the prosecution are Amarjeet (PW4) and Surjeet (PW5), who are the sons of complainant Nafe Singh. Thus, there is no independent corroboration to the version of complainant in the present case. The prosecution has also failed to prove ownership of the tractor make Model Ford in which the stolen paddy crop was allegedly taken away by the assailants. Further, no evidence was produced on record as to how the remaining paddy was disposed of.

In view of the above, this Court does not find any illegality, irregularity or perversity in the impugned order dated 4.9.2014 passed by learned Juvenile Justice Board, Kaithal. Therefore, affirming the same, the present revision petition, being devoid of any merit, is dismissed.

May 20, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE