

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

CRR No.3918 of 2015 (O&M)

Date of Decision: September 01, 2016

Joga Singh and others

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioners.

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Rishav Jain, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Joga Singh, Jagir Singh, Amarjit Singh alias Ladi, Nishan Singh against respondents State of Punjab and Sham Lal, challenging the impugned judgment of conviction and order of sentence dated 22.11.2012 passed by learned Addl. Chief Judicial Magistrate, Patiala, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of two months under Section 451 IPC and further to undergo rigorous imprisonment for a

period of three months under Section 447 IPC and also challenging the

judgment dated 23.09.2015 passed by learned Addl. Sessions Judge, Patiala, vide which appeal filed by petitioners was dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

The brief facts of the case as noted down in the judgment passed by learned ACJM, Patiala, are as under:-

“2. Brief facts of the prosecution case are that the on 24.7.2007, HC Chain Sukh Singh along with other police officials was present in the area of Urban Estate Phase-II on Bypass Bridge near Jashandeep Filling Station, where Sham Lal son of Sobha Ram resident of H.No. 7135/5, near Street No.3, Gurbax Colony, Patiala met him and got his statement recorded to HC Chain Sukh Singh. In his statement complainant has stated that he is resident of aforementioned address and is running Mobile Shop at Rajpura Colony, Patiala. He and his brother Dev Raj purchased a plot measuring 385 Sq. yards situated at Guru Nanak Nagar, Patiala in the year 1981. They are owner in possession of the above said plot. Complainant constructed six rooms in the above said plot. Once in the year 1989, Pala Singh son of Jagir Singh, Joga Singh and others tried to take possession of his plot, upon which they had filed a court case. The court of Shri Mohinder Singh, the then Additional Senior Sub Judge, Patiala decided the case in their favour and restrained them from interfering in the possession over the above said plot. Thereafter the opposite party filed an appeal in the Sessions Court, but their appeal had also been dismissed. In the year 2006 he moved an application before the senior officers, which was inquired into by the S.P. (City), Patiala and it was found that they are in possession over the said plot. On 21.7.2007 complainant saw heap of bricks in front of the house of Jagir Singh son of Pala Singh, upon which he suspected that the above said persons will encroach upon his plot in the night time. They kept vigil during night. Complainant and his father and their one relative namely Krishan Gopal visited the spot at about 3.00 AM where they found that Joga Singh, Jagir Singh sons of Pala Singh, Nishan Singh son of Kaka Singh and Amarjit Singh alias Ladi son of Jagir Singh, residents of Guru Nanak Nagar, Patiala are trying to dig foundations in their plot, who on seeing them fled away from the spot. He can identify them on coming face to face. The said persons have tried to encroach upon their plot. After recording the said statement HC Chain Sukh Singh made his endorsement underneath the same and sent the ruqa through PHG Bhupinder Singh to the Police Station for registration of FIR.

HC Chain Sukh Singh reached at the spot and prepared the rough site plan of the place of occurrence and took into police possession one Tasla and spade lying at the spot vide separate recovery memo. Statements of witnesses were recorded. On 27.7.2007 accused were arrested in the case. On completion of the investigation and other necessary formalities, the Challan was prepared and presented in the court. ”

To substantiate its allegations, the prosecution examined PW-1 Harinder Pal Singh, PW-2 Krishan Gopal, PW-3 Head Constable Chain Sukh Singh, PW-4 Constable Jasbir Singh, PW-5 Raj Kumar, Halqa Patwari and PW-6 Sham Lal, complainant.

After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. and they denied the allegations of the prosecution and pleaded their innocence and false implication. In defence, accused examined DW-1 Pawandeep Singh, Patwari Halqa. Accused Jagir Singh, also tendered into evidence attested copy of the sale deed Ex.D2 and other documents.

Learned ACJM, Patiala, after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Patiala vide judgment dated 23.09.2015.

Aggrieved from the above-said judgments, present revision petition has been filed.

At the time of arguments, learned counsel for the revision petitioners argued that even if the facts are taken as it is and proved, even then no offence under Section 451 IPC is made out.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

I have gone through the provisions of Section 451 IPC. It provides punishment for house trespass in order to the committing of any offence punishable with imprisonment. In the present case, offence under Section 451 IPC is not made out firstly because as per prosecution version, accused tried to dig up the foundation in the plot i.e. open plot and not a house. Secondly, there is nothing in the prosecution version that they have committed house trespass in order to commit the offence punishable with imprisonment. Therefore, the offence under Section 451 IPC is not made out and the conviction and sentence imposed by the Courts below upon the revision petitioners under Section 451 IPC is set aside.

Learned counsel for the revision petitioners further argued that even the sentence imposed under Section 447 IPC cannot be imposed as it is not a criminal trespass as per prosecution version. Rather, the allegations are that accused tried to commit trespass. I have gone through the prosecution version. The allegation against the accused is that they have thrown the bricks etc. outside the plot and they tried to dig the foundation. There is nothing on the record that they dug up the foundation in the plot. Therefore, the revision petitioners are only punishable for the offence under Section 447 read with Section 511 IPC. The FIR also registered under Sections 447, 451, 511 and 34 IPC and the challan has also been presented under these Sections.

The maximum sentence under Section 447 IPC is three months imprisonment and if it is only an attempt to commit criminal trespass, then the sentence would be half of the maximum sentence. The revision petitioners have already undergone more than one month of actual sentence.

The petitioners are convicted under Sections 447 read with Section 511 IPC.

Keeping in view the above discussion, the sentence imposed upon the revision petitioners is reduced to the sentence already undergone by them. As argued, the fine has already been paid.

Therefore, the present revision petition stands partly allowed.

Since, the revision petitioners are on bail, their bail/surety bonds stand discharged.

September 01, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No