

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

**CRM-M No.38457 of 2016 (O&M)**

**Date of Decision: 21.2.2017**

**Gursant Singh**

**..Petitioner**

**Vs.**

**State of Punjab and another**

**..Respondents**

**CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH**

Present: Mr.P.S.Ahluwalia and Mr.Gaurav Singla, Advocates for the  
petitioner.

Mr.Sidakmeet Singh Sandhu, AAG Punjab.

**AMOL RATTAN SINGH, J.**

**CRM No.5202 of 2017**

Application is allowed.

Order of the learned trial Court dated 13.2.2017 is taken on record as Annexure P-5 and the certificate issued by the Midway Community Care Mandurah, Western Australia, stating that Sukhpal Kaur Gill, who is stated to be the wife of the petitioner, has worked at the said Community Care since 20.10.2014, is taken on record as Annexure P-6.

**Main case**

By this petition, the petitioner seeks quashing of FIR No.330 dated 31.12.2006, registered at Police Station Sadar, Sri Muktsar Sahib, for the alleged commission of offences punishable under Sections 427, 431, 34 IPC.

Upon notice having been issued on 26.10.2016, the State as

also respondent No.2, i.e. the complainant in the FIR, had put in an appearance through their respective counsel on 17.1.2017.

Mr.Ahluwalia, learned counsel for the petitioner, had submitted on that day, i.e. 17.1.2017, that the petitioners' brother and father have both been acquitted by the trial Court and in the judgment (Annexure P-3) it has been held that the only conclusion that can be drawn is that the complainant in an attempt to carve out a passage, had roped in the accused just to pressurise them to leave a chunk of their land, so that he can use it as a passage.

On the aforesaid contention, it had been directed that the petitioner, upon return from Australia, where he is stated to be a permanent resident, would surrender before the trial Court, which would then immediately release him on bail.

Pursuant to the said order, the petitioner is stated to have returned from Australia and surrendered before the trial Court, which has admitted him to bail on 13.2.2017.

It is to be noticed that despite the fact that this case has been called out twice today, learned counsel for respondent No.2 has not put in an appearance.

Mr.Ahluwalia, learned counsel for the petitioner, has again drawn attention to the order of the trial Court (Annexure P-3) by which his co-accused, i.e. his father Tara Singh and brother Gurbhagat Singh, have been acquitted of the charges framed against them. Learned counsel points to the fact that the petitioner was attributed an identical role in the FIR to the following effect:

“This passage ends after joining rectangle No.101, killa No.17 and in the corner 2 marlas have been left. On 24.12.2006, Tara Singh son of Balvir Singh, Gursant Singh and Gurbhagat Singh sons of Tara Singh, residents of village Phullewala demolished the passage measuring 1 acre out of this passage, when we enquired from them about demolished of the passage, then they abused us and extended threats of criminal intimidation. Again on 30.12.2006 the above mentioned persons also demolished the remaining passage measuring 80 karams and got constructed the water course. Today I have restored this passage after constructing the same again after demolishing the water course and I along with Sawinder Singh son of Joginder Singh, Jatt, resident of Mehraj Wala by accompanying him was going to lodge the information, then Tara Singh etc. after demolishing the above said passage again with their Sonalike Tractor, constructed the water course.”

Further, in the judgment, the Court, upon appraisal of the evidence led before it, held as follows:-

“The above said evidence of the complainant does not inspire any confidence in so far as demolishing of any passage by the accused persons is concerned, because, the complainant in his cross examination has admitted to that he has not seen the accused demolishing any passage and that his version in this is only hear say. His saying so is obvious as there is no such passage existing at the spot in the land described by him. It was incumbent upon the prosecution to prove the existence of any such passage in first place but the prosecution has failed to discharge this very onus. The complainant has not produced any document before the police or in the court to establish the existence of any such passage as alleged by him.”

Thereafter, it was also noticed in the judgment that the Investigating Officer did not take any pains to collect the evidence and had

in fact asked the complainant to produce before him the record of the *Patwari*, which also was not done. Even the *Patwari* with whom the revenue record pertaining to the passage in question was admitted to be, was not listed as a witness. Yet further, it was noticed that the Investigating Officer had miserably failed to discharge his duty and had he done so, the matter would not even have travelled upto the Court, meaning thereby that had it been investigated properly, it would have resulted in cancellation of the FIR, whereas it had actually burdened the Court and had put the accused through the agony of facing trial for the offences that they never committed.

The trial Court then went on to discuss the revenue document to eventually hold that in fact there was no passage existent and the complainant in his attempt to carve out a passage, had roped in the accused just to pressurise them to leave a chunk of their land. It was observed as follows:-

“It is the complainant who in his attempt to carve out a passage has roped into the accused in the case just to pressurise them to leave the chunk of their land to be used by him as passage. This is the precise reason that no body else has come forward to support and corroborate the version of the complainant.”

On the aforesaid findings, the two persons co-accused with the petitioner, who had faced trial, i.e. his father and brother, were acquitted of the charges framed against them giving them the benefit of doubt.

Thus, Mr.Ahluwalia submits, that the co-accused of the petitioner having been acquitted, vide a detailed reasoned judgment, with no other role attributed to the petitioner other than that attributed to Tara Singh and Gurbhagat Singh, the petitioner should not be made to face the agony of

trial, like his co accused were.

Mr.Sidakmeet Singh Sandhu, learned AAG Punjab, having gone through the judgment of the trial court and reasoning, very fairly submits that in the face of the aforesaid findings, with no appeal shown to have been filed, he could have no argument in the present case, with the trial court having observed even to the extent that no passage existed and the complainant had actually tried to carve out a passage and in that process had admitted to pressurising the petitioner and his co-accused by filing an FIR against them.

Looking at the aforesaid circumstances, in the opinion of this Court, the learned trial Court should, in fact, have acquitted the accused wholly and completely and not just by giving them the benefit of doubt.

In view of the above, this petition is allowed and FIR No. No.330, dated 31.12.2006, registered at Police Station Sadar, Sri Muktsar Sahib, for the alleged commission of offences punishable under Sections 427, 431, 34 IPC, now only standing registered against the petitioner, alongwith all proceedings arising therefrom, is hereby quashed.

**(Amol Rattan Singh)**  
**Judge**

**21.2.2017**  
Meenu

Whether speaking/reasoned - Yes/No  
Whether Reportable - Yes/No