

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

CRR-3792 of 2013

Date of decision:-5.9.2017

Lakhbir Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Ms.Rakhi Sharma, Advocate
for the petitioner.

Mr.K.S. Aulakh, DAG, Punjab.

Mr.G.S. Bawal, Advocate
for respondent No.2.

H.S. MADAAN, J.

This revision petition is directed against judgment dated 5.8.2013 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar vide which he had accepted the appeal and set aside the judgment of conviction and order of sentence passed against the accused by Judicial Magistrate Ist Class, Amritsar vide order dated 13.8.2010.

The complainant, who is revision petitioner before this Court prays that the judgment passed by learned Additional Sessions Judge, Amritsar be set aside and that of Judicial Magistrate Ist Class, Amritsar be restored by way of acceptance of the revision petition.

Briefly stated facts of the case are that criminal machinery in this case was set into motion by complainant Lakhbir Singh son of Balwant Singh, who had retired as Mechanic from Punjab Roadways, Batala Depot in the year 1999 and thereafter was engaged in avocation of agriculture and plying a school van.

Inter alia, in such statement made by complainant to the police, he had stated that on 25.10.2016 at about 5:30 p.m. when he was going to Gurdwara for paying obeisance and had reached near the Gurdwara, he found Palwinder Singh @ Pappu son of Sadha Singh to be there, who started abusing him stating that he was attracting the students towards himself by charging less amount for commuting to the school and he would have to teach him a lesson. Palwinder Singh tried to assault him but due to intervention of Amardeep Singh, who had reached there situation was saved. Hearing commotion, Harjinder Singh brother of the complainant had also reached at the spot. Then complainant and his brother Harjinder Singh were returning home and when they had reached nearby, Palwinder Singh alias Pappu armed with a *gatra kirpan* (small sword) raised *lalkara* (exhortation) and aimed blow at complainant hitting him on backside of right shoulder. The complainant and his brother Harjinder Singh raised alarm of *marditta – marditta* (killed - killed). Palwinder Singh escaped from the spot along with *kirpan*. The complainant injured was taken to Civil Hospital, Majitha from where he was referred to Civil Hospital, Amritsar and then to Guru Nanak Dev Hospital, Amritsar, however, due to his critical condition, he was admitted in Muni Lal Chopra Hospital, Amritsar ,where he was kept in ICU Ward

and medically treated. Then he was shifted from ICU to the General Ward. On 27.10.2006, Harjinder Singh brother of the complainant moved an application in the Court of Magistrate at Amritsar for the purpose of getting orders for medical examination of complainant – injured from Civil Hospital, Amritsar. The needful was got done. SI Jaspal Singh had recorded statement of complainant – injured on the basis of which formal FIR for the offence under Section 324 IPC was registered against the accused. Later on, when x-ray report was received offence under Section 326 IPC was added. Accused was arrested in this case. After completion of investigation and other formalities, challan was presented in the Court of Area Magistrate, Amritsar.

On presentation of challan in the Court of Area Magistrate, Amritsar, he supplied copies of documents relied upon in the challan to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Amritsar finding that charge for offences under Sections 326 and 324 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, he pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as five witnesses, namely, Lakhbir Singh as PW1, Dr.Poonam Ohri as PW2, Harjinder Singh as PW3, Dr.Rajesh Kumar as PW4 and SI Jaspal Singh as PW5.

Thereafter, the prosecution evidence was closed by APP for the State.

Statement of accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case.

Accused did not lead any evidence in his defence.

After hearing arguments, learned Judicial Magistrate Ist Class, Amritsar convicted and sentenced the accused as under:

Offence under Section	Sentence
326 IPC	Rigorous imprisonment for a period of three years and to pay a fine of Rs.200/- and in default thereof, to further undergo rigorous imprisonment for two days.
324 IPC	Rigorous imprisonment for a period of one year.

Both the sentences were ordered to run concurrently.

Feeling aggrieved by the judgment of conviction and order of sentence, the accused – convict had filed an appeal, which was accepted by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar as mentioned supra, setting aside the judgment passed by JMIC, Amritsar and acquitted the accused. Hence, the present revision petition.

I have heard learned counsel for the revision petitioner, learned State counsel counsel and learned counsel for respondent No.2 besides going through the record.

Learned counsel for the revision petitioner has contended that there is no infirmity or illegality in the judgment passed by Judicial Magistrate Ist Class, Amritsar and the Appellate Court by adopting erroneous approach and giving faulty reasoning wrongly upset that judgment while giving verdict of acquittal to the accused, therefore,

judgment of learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar be set aside and that of Judicial Magistrate Ist Class be restored by way of acceptance of revision petition.

This prayer is opposed by learned State counsel and learned counsel for the respondent No.2 contending that no such incident had taken place; as a matter of fact dispute between the parties was with regard to carriage of the students to the school in the vans; the accused happens to be an Amritdhari (Baptized Sikh), he had not attacked the complainant, the injuries are manipulated, the complainant injured did not get himself medically examined at the earliest and there is gross delay in his medical examination; he is silent as regards his having been taken to Muni Lal Chopra Hospital, Amritsar, where he had given different version of the incident, therefore, he was not admitted in any Government hospital. All those factors had rendered the prosecution story doubtful. Those factors had not been taken into consideration by the trial Court, however, those were properly considered by the Appellate Court and for that reason the accused was acquitted of the charge. Therefore, there is nothing wrong in the judgment passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done. In the instant case, while

perusing the judgment passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar, I do not find any such legal defect which may call for interference while exercising the revisional jurisdiction. Learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar has kept into view various factors while giving verdict of acquittal in favour of the accused, first there being delay of seven days in lodging the FIR which has not been explained satisfactorily; second non-production of any docket referring injured to Civil Majitha, Majitha; third no documentary proof regarding referring injured – complainant Lakhbir Singh to Civil Hospital, Amritsar by Civil Hospital, Majitha and thereafter from Civil Hospital, Amritsar to Guru Nanak Dev Hospital, Amritsar; the complainant – injured was even not been admitted in Guru Nanak Dev Hospital, admission of complainant – injured Lakhbir Singh in Muni Lal Chopra Memorial Hospital, Amritsar which is a private medical institute; then non-production of entry in daily diary register said to have been made by PW5 Jaspal Singh on returning from Majitha hospital on 26.10.2006 for the purpose of rendering explanation for delay; medical document from Muni Lal Chopra Memorial Hospital Mark – A placed on file by the prosecution in statement of complainant-injured Lakhbir Singh bearing signatures of Lakhbir Singh showing that Lakhbir Singh was taken to some registered medical practitioner where he was administered plasma expanders and I/V fluid due to low blood pressure and thereafter he was taken to that hospital for further management and furthermore such information given by the injured Lakhbir Singh to the doctor at Muni Lal Chopra Memorial Hospital going against version of the

complainant that complainant was firstly taken to Civil Hospital, Majitha from where he was referred to Civil Hospital, Amritsar but due to serious condition he was again referred Guru Nanak Dev Hospital, Amritsar by Civil Hospital, Amritsar. Medical report of Muni Lal Chopra Memorial Hospital, Mark-A showing that injured Lakhbir Singh had disclosed to the doctor that when he had gone to answer the call of nature, he accidentally fell on some agricultural tool under the effect of alcohol and mentioned therein that patient had complaint of stab wound over right side sub scapular region due to fall on sharp edged tool. Thus the version going against the version as set up by the prosecution in the FIR.

The Appellate Court has given several other reasons for coming to the conclusion that prosecution has failed to prove its charge against the accused beyond shadow of reasonable doubt, accepting the appeal and setting aside the judgment of conviction and order of sentence passed against the accused. Thus, no ground is there to upset the judgment passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar by way of acceptance of revision petition.

Dismissed.

5.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No