

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

**CRR No.1563 of 2016 (O&M)
Date of Decision: April 18, 2017**

Surinderjit Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.B.S.Baath, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Surinderjit Singh against State of Punjab and other respondents, challenging the impugned judgment dated 17.02.2016 passed by learned Addl. Sessions Judge, Gurdaspur, vide which the appeal filed by the accused-respondents against the judgment of conviction and order of sentence dated 08.08.2012 passed by learned JMIC, Batala, was allowed and they were acquitted of the charges framed against them.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that challan was presented against accused Harjinder Singh, Gurmej Singh, Shiv Singh, Gur Mangal Singh, Jaswant Singh and Hira Singh in case FIR No.27 dated 24.02.2005 under Sections 419, 199 and 170 IPC. The brief facts of the case as noted down in

the judgment passed by learned JMIC, Batala, are as under:-

“2 The criminal justice system in this case was set into motion on the application moved by Surinderjit Singh son of Gurcharan Singh, resident of Chack Wassan moved to District Magistrate, Gurdaspur, stating therein that accused Jagjir Singh son of Teja Singh, Surinder Singh son of Sohan Singh, Major Singh son of Jagir Singh and Hardip Singh son of Jagir Singh were undergoing life imprisonment under the murder case. That these accused were resident of village Chack Wassan, Police Station Sri Hargobind Pur. That they want to come on parole on the pretext of getting their house repaired, which were in good condition. That the Gram Panchayat through registered letter dated 05.08.2004 had informed the Superintendent, Central Jail, Gurdaspur that any enquiry regarding these accused be conducted from the Panchayat of village Chack Wassan. That he (complainant) was residing alone in the village and was a Teacher in Government School and they had earlier also attacked on him (complainant) and he (complainant) had danger from these accused. That the accused belonged to different Terrorist Organization. That Gram Panchayat village Chak Wassan had already passed the resolution on 31.08.2004 that there is danger of peace in village Withwan from where, the accused had the enquiry about their character, had also gave in written that they belonged to village Chack Wassan and the present Sarpanch of panchayat had declared that accused were resident of village Chack Wassan. That Gurmej Singh who disclosed himself as Ex-Sarpanch of village Withwan, was the Sarpanch of village Gopal Pur. That Harjinder Singh, who disclosed himself as Lambardar of village Withwan was also resident of Gopal Pur and Shiv Sinvh, who at the time of attestation disclosed himself as Ex-Sarpanch of village Chack Wassan was never remained as Sarpanch or member of village. That all the accused persons had wrongly attested their report in order to cause damage to him (complainant) as the accused had filed an appeal in the Hon'ble High Court.”

Learned JMIC, Batala, on the basis of the evidence, convicted and sentenced all the accused under Sections 170 and 193 IPC, vide judgment of conviction and order of sentence dated 08.08.2012. An appeal was filed by the accused before learned Court of Session and learned Addl. Sessions Judge, Gurdaspur, vide impugned judgment dated 17.02.2016, accepted the appeal and acquitted the accused of the charges framed against them.

Aggrieved from the above-said judgment dated 17.02.2016, present revision has been filed by the petitioner-complainant.

From the record, especially the judgment dated 17.02.2016, I find that the findings given by learned Addl. Sessions Judge, Gurdaspur, are correct, as per evidence and law. In no way, the findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the learned lower Appellate Court. Nothing has been pointed out as to how the findings are illegal.

Section 195 Cr.P.C. provides as under:-

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance-

(a)

(i) If any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) Of any abetment of, attempt to commit, such offence, or

(iii) Of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)

(i) Of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) Of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) Of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that court is

subordinate.

1[except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the court; and upon its receipt by the court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from appeal able decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situate:

Provided that-

(a) Where appeals lie to more than one court, the Appellate Court of inferior jurisdiction shall be the court to which such court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

1. Subs. by act 2 of 2006, sec.3, for "except on the complaint in writing of that Court , or of some other Court to which is subordinate" (w.e.f. 16-4-2006).

The Court cannot take cognizance to convict the accused under Section 193 IPC without compliance of Section 195 Cr.P.C.

Qua Section 170 IPC, also no case is made out. ASI went to get the report from the respectables and respectables have given the

statement regarding the good conduct to the ASI. It is not argued that the statement given by those respectables is false statement and knowingly given by them wrongly nor there is anything on the record that the statement has been given in the official capacity which can be read as evidence.

Learned Addl. Sessions Judge, Gurdaspur, has discussed in the judgment that earlier there was one village namely Withwan, having four patties and village Withwan was bifurcated into separate villages. The Court has also discussed the admitted documents Mark A to Mark D, for people showing the residents of village Withwan irrespective of their original villages. Learned lower Appellate Court below also discussed the statement of PW-12 ASI Harpal Singh, who stated that several persons got registered the cases with the police station Sri Hargobindpur and they used to tell themselves as residents of village irrespective of their original villages.

From the record, I find that the accused have been rightly acquitted by the Court of Sessions in the appeal. Learned Addl. Sessions Judge, Gurdaspur, has given the findings after re-appreciating the evidence in right perspective. The impugned judgment dated 17.02.2016 passed by learned Addl. Sessions Judge, Gurdaspur, is correct, as per law and evidence and does not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

April 18, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No