

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

CRR-3562 of 2015

Date of decision:-20.7.2017

Kulwant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Ms.G.K. Mann, Advocate
for the petitioner.

H.S. MADAAN, J.

This revision petition has been filed against judgment dated 14.7.2015 passed by the Court of learned Additional Sessions Judge, Amritsar vide which the said Court had accepted the appeal filed against judgment of conviction and order of sentence dated 20.12.2013 passed by the Court of Judicial Magistrate Ist Class, Ajnala and had acquitted the accused of the charge framed against him.

The revision - petitioner prays that the revision petition be accepted, the impugned judgment passed by the learned Additional Sessions Judge, Amritsar be set aside and the judgment passed by Judicial Magistrate Ist Class, Ajnala be upheld, resultantly accused - respondents

No.2 to 8 be convicted and sentenced accordingly.

Briefly stated, facts of the case are that complainant Kulwant Singh son of Ujjagar Singh, resident of village Gaggomahal, Tehsil Ajnala, District Amritsar had filed a criminal complaint under Sections 379, 427, 447, 506 IPC impleading Sukha Singh, Kashmir Singh, Wassan Singh, Satnam Singh, Hardev Singh, Mukhtar Singh, Tara Chand and Mota Singh, all residents of village Gaggomahal, Tehsil Ajnala, District Amritsar as accused.

Inter alia, in the complaint, he has alleged that he had carved out a fishery pond in his land measuring 7 Kanals 16 Marlas having khasra Nos. 276(1-15), 22//2/2(0-3), 2/3(0-5), 2/5(0-6), 2/6(0-5), 2/7(0-5), 2/8(0-6), 2/9(1-17), 22/2/1(2-9), 2/4(0-5), Khewat Khatauni No.168/245-249 as per *jamabandi* for the year 2001-2002 situated at village Gaggomahal, Tehsil Ajnala, District Amritsar and had put fish seed in the pond which he purchased from Fishery Department, Amritsar about 8-9 months earlier to filing of the complaint; that on the intervening night of 24/25.2.2008, all the accused impleaded in the complaint carrying spades came to his fishery farm and started demolishing its boundary wall, resultantly, the water got drained out, the fish were picked up by accused and taken along with them by putting those in gunny bags. As a result of said wrongful acts of the accused, fish farm of complainant was completely destroyed. The incident was witnessed by complainant and his son Nishan Singh, besides, Amrik Singh, who had arrived at the spot after hearing noises. On seeing them, accused rather threatened to kill them in case they stopped them from demolishing the fish farm. According to the

complainant, he along with his son had approached police of Police Post Gaggomahal for registration of FIR against the accused persons. Initially, the police refused to register the FIR but when the complainant approached higher police officers then FIR No.27 dated 27.2.2008 for the offences under Sections 427/447 IPC was registered against the accused at Police Station Ramdas. However, the police did not add offences under Section 379 and 506 IPC, though the accused had demolished the fish pond of complainant, committed theft of fish causing him loss to the tune of Rs.60,000/- to Rs.70,000/- and had also threatened him. FIR was got cancelled by police from Illaqa Magistrate without consent of complainant, as such complainant filed a criminal complaint in the Court of Judicial Magistrate Ist Class, Ajnala.

After recording preliminary evidence, the trial Magistrate summoned the accused to face trial under Sections 379, 427, 447 and 506 IPC. The accused accordingly put in appearance in the Court.

After recording pre-charge evidence and then finding that charge for offences under Sections 379, 427, 447 and 506 IPC was disclosed against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

After framing of charge in after charge evidence complainant got his statement recorded as CW1 narrating the incident as alleged in the complaint. CW2 Amrik Singh and CW3 Nishan Singh were also cross-examined during after charge evidence and thereafter, the case was fixed for recording statements of accused under Section 313 Cr.P.C.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case. The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court had convicted and sentenced the accused as mentioned above, which left them aggrieved and they have filed an appeal against their conviction and sentence, which has been accepted by the Court of learned Additional Sessions Judge, Amritsar, resultantly, the impugned judgment of conviction and sentence passed by Judicial Magistrate Ist Class, Ajnala was set aside and accused were acquitted of the charge framed against them.

Now the complainant is before this Court by way of filing the present revision petition.

I have heard learned counsel for the parties besides going through the records and I find that there is no merit in the revision petition.

Section 401 of the Code of Criminal Procedure deals with High Court's power of revision. It is a settled law that the revisional jurisdiction is to be exercised only in exceptional cases where the interference is required for correction of manifest illegality or prevention of gross miscarriage of justice. Here, the instant case does not come within four corners of the said provision. The First Appellate Court has given valid and logical reasoning while coming to the conclusion that trial Court had fallen error in convicting the accused when the facts and circumstances and evidence brought on file did not warrant that. The First

Appellate Court has properly appraised the evidence and correctly interpreted the law while coming to the conclusion that version of complainant lack plausibility and does not inspire confidence inasmuch as complainant had not produced any documentary evidence in the form of revenue record etc. to show that fish farm was ever created by him in his land. Secondly, the FIR which was lodged by the complainant with Police Station Ramdas i.e. FIR No.27 dated 27.2.2008 for the offences under Sections 427/447 IPC has since been cancelled by the police and the cancellation report has been accepted by the Court of Area Magistrate on 2.10.2009. Thirdly, the presence at the spot of PWs is doubtful and no person from nearby area had reached the spot and that photographs of demolished fish farm had not been proved, as such the First Appellate Court was justified in accepting the appeal and dismissing the complaint.

There is no merit in the revision petition and the same stands dismissed accordingly.

20.7.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No