

In the High Court of Punjab and Haryana at Chandigarh

CRR No.754 of 2014 (O&M)
Date of decision: July 31,2017

Laxmi Narain

.....Petitioner

Versus

Shatrughan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Hitesh Verma, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J.

Petitioner-complainant-Laxmi Narain has filed the present petition under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging judgement dated 14.11.2011 (Annexure P3) passed by the trial Court, whereby all the accused were acquitted of the offence under Sections 148, 149, 323, 457, 427 of the Indian Penal Code, 1860 ('IPC' for short) , in FIR No. 308 dated 14.11.2008 registered at Police Station Kanina, as well as the judgement dated 8.8.2013 (Annexure P1) passed by the appellate Court dismissing the appeal filed by the petitioner-complainant.

Brief facts of the case are that the petitioner, on 14.11.2008, got the above-mentioned FIR registered against the respondents-accused

persons with the allegations that they under the influence of liquor trespassed into his house armed with lathis and inflicted fist blows on his old parents. On completion of investigation, report under Section 174 Cr.PC was submitted and charges were framed against the accused persons under Sections 148, 323, 427, 457 read with Section 149 IPC vide order dated 2.6.2009 passed by the trial Court. Thereafter, petitioner in support of his case, examined four witnesses i.e. PW1, Complainant- Laxmi Narain, PW2 Bhateri Devi, PW3 Dharam Pal, retired Inspector and PW4 Gurdial Singh, retired Sub Inspector.

Trial Court, after recording the statements of accused under Section 313 Cr.P.C, in which they pleaded innocence and false implication, vide the impugned judgment dated 14.11.2011, acquitted respondents-accused of the charges. Thereafter, the petitioner preferred an appeal which was also dismissed by the appellate Court and, therefore, this petition has been filed. Along with this petition, there is an application under Section 5 of the Limitation Act,1963 seeking condonation of delay of 79 days. The revision petition was filed in the year 2014 and it remained pending for a considerable long time in motion hearing.

Learned counsel for the petitioner has submitted that it is proved from the statements of PW1 and PW2 that the accused persons on 13.11.2008, trespassed into petitioner's house and gave fist blows to his parents and demolished the boundary wall of his house. Learned counsel further submitted that the Courts below have not properly appreciated the statements of PW1 and PW2 as well as the statement of Investigating Officer, who conducted the investigation and found that the respondents

have committed the offence.

After hearing the learned counsel for the petitioner, I am of the opinion that the present petition deserves dismissal.

In order to prove offence of criminal trespass under Section 441 IPC, the complainant has to prove his actual physical possession over the place where the occurrence has taken place.

From the statement of PW4, Sub Inspector Gurdial Singh, who conducted the investigation, coupled with the site plan PW4/C, it is clear that at the place of occurrence, some construction was in existence and the place where the occurrence took place was shown to be inside the said plot. Accused-Daya Ram, Sher Singh and Rakesh are real brother of complainant-Laxmi Narain, whereas, accused-Ravinder is son of Daya Ram, brother of complainant-Laxmi Narain. It has come in the statement under Section 313 Cr.P.C. of the accused that, in fact, accused-Sher Singh was owner in possession of plot in question on account of mutual partition between them and Sher Singh had raised the construction and, therefore, the complainant had no concern over the plot.

During the cross-examination of PW1, it was specifically put to him that the construction was raised by Sher Singh, who had a share in the plot and the same was not denied by the complainant-Laxmi Narain. Further, the complainant has failed to prove on record ownership or exclusive possession over the plot where the alleged occurrence had taken place and, therefore, offence of criminal trespass under Section 441 is not made out. Therefore, no offence under Section 457 IPC, which is aggravated form of offence under Section 441 IPC, is made out.

Perusal of the statement of PW1 further shows that it is alleged that the accused persons, were under the influence of liquor, when they entered the plot and demolished the boundary wall. There is no evidence on record to show that the wall shown as 'A' and 'B' in the site plan Exhibit PW4/C were constructed by the complainant from his own expenses and, therefore, the ingredients under Section 427 IPC are also not made out. A perusal of statement of PW1 also reveals that he had attributed slap blows to his parents without attributing any specific injury to any of the accused and, therefore, the allegations are general in nature. In her statement PW2- Bhateri Devi attributed injury only to one Raju, and, thus, has not the supported version of PW1. Hence, no offence under Section 323 IPC is proved.

Therefore, once it is held that the petitioner has failed to prove the commission of offence by the accused persons by proving his exclusive ownership or possession over the place of occurrence, the offences under Section 148 IPC or under Section 146 IPC are not established in the present case.

Since both the Courts below have recorded the concurrent finding that the petitioner-complainant has failed to prove his case, in view of the judgment of Hon'ble the Supreme Court in **Allarakha K. Mansuri v. State of Gujarat, 2002(1) RCR (Criminal) 748**, holding that where, in a case, two views are possible, the one which favours the accused, has to be adopted by the Court, the impugned order does not call for interference. Accordingly, this revision petition is dismissed.

Since the revision petition is dismissed on merits, the

application for condonation of delay is also dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

July 31, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No