

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

**Criminal Revision No.3606 of 2016
Date of Decision:-17.7.2017**

Sheo Ram

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Krishan Singh, Advocate
for the petitioner.

HARI PAL VERMA J.

The petitioner has filed the present revision petition against the judgment dated 28.7.2016 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby his appeal against the judgment of acquittal dated 6.3.2014 passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri was dismissed.

Briefly stated on the basis of complaint made by the petitioner-complainant, FIR No. 83 dated 26.4.2006, under Sections 148, 149, 447 and 506 IPC was registered against the respondents-accused at Police Station Chhappar. It is the case of the prosecution that on 25.4.2006 an information was received by the police through telephone that in village Saran, accused namely, Sukhdev, Raghuvansh Singh, Maya, Manjit Singh,

Satwinder Singh, Parbu Simranjit Singh, Gurdev Singh etc. along with their companions are trying to encroach upon the land of panchayat. On receipt of the aforesaid information, police party headed by ASI Gurdayal Singh reached at village Saran, where the petitioner-complainant, who is husband of Mahila Sarpanch, met them. The petitioner made a complaint that land of the gram panchayat was lying vacant near the Gurudwara Sahib and the accused persons are trying to encroach upon the same with the help of Kashmiri Lal, Sukhdev Singh, Amrit, Ishwar, Bindu, Surender, Roshan Lal, Mange Ram, Charana, Naresh Kumar, Rajinder, Surta, who were armed with *dandas* and *gandasis* and in the lights of tractors are trying to raise a wall. However, when the panchayat objected to them, the accused abused the panchayat members. Thus the accused have committed offence punishable under Sections 148, 149, 447 and 506 of IPC.

The prosecution has failed to establish that the suit property was owned or possessed by the gram panchayat Saran. The evidence produced by the prosecution was not sufficient to show that the accused have entered the property which was in the possession of the gram panchayat Saran with an intention to commit any offence or to intimidate or to annoy any member of the panchayat as alleged. In order to prove Section 447 IPC, the prosecution is required to prove that there was trespass on the property in possession of a person by the accused with an intent to commit some offence. Since the possession of the gram panchayat was not established, the offence of criminal trespass could not be established. Similarly, the allegation that the accused were armed with *dandas* and

gandasis, during the course of evidence, complainant (PW2) has stated that accused were armed with *dandas* and he could not depose that the accused were also armed with *gandasis*. It has been stated that *lathis* were recovered from the accused persons but said version of the prosecution is not corroborated on record as the Investigating Officer (PW 9) has stated that the accused persons were not present when he visited the spot and only 3 *lathis* have shown to be taken into possession by the police. No case property was produced by the prosecution during the course of trial. In the absence of production of the case property, prosecution has failed to prove that the accused persons were armed with deadly weapons or that any *lathis* were recovered from them. Though it was pleaded that members of the gram panchayat tried to stop the accused persons, but there was nothing on record to show, which of the witnesses examined on record were members of the gram panchayat. The complainant Sheo Ram was husband of Sarpanch, whereas Sukhwinder Singh was husband of Balwinder Kaur, Panch. Thus, neither the Sarpanch of the village nor any Panch of the village have deposed on oath that they were abused by the accused persons or have been criminally intimidated. Accordingly, the trial Court acquitted the accused persons.

Aggrieved against the aforesaid judgment of acquittal dated 6.3.2014, the petitioner filed an appeal. The appeal was also dismissed vide judgment dated 28.7.2016 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri holding that the trial Court has appreciated the legal and factual proposition and has returned the finding of acquittal of the

accused.

The petitioner has filed the present revision petition impugning the aforesaid judgments of the Courts below.

I have heard learned counsel for the petitioner.

The case of the prosecution is based on the version that the property encroached and trespassed by the accused is owned and possessed by the Gram Panchayat of Village Saran. The accused have tried to raise construction of a wall on the intervening night of 25/26.4.2006. However, apart from the fact that in the evidence of the prosecution witnesses, there are discrepancies in the statements of the witnesses, the complainant has failed to prove that the suit property was owned or possessed by the gram panchayat Saran. No member of the panchayat has been produced, who may depose that they were abused by the accused. Once the petitioner-complainant has failed to adduce any evidence to substantiate his averments, no case for interference in the well reasoned judgments passed by the Courts below is made out.

The present revision petition is dismissed.

July 17, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No