

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

**CRR No.772 of 2016 (O&M)
Date of Decision: February 22, 2017**

Kuldeep Singh and another

...Petitioners

VERSUS

Gurdip Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajeshwar Singh, Advocate
for the petitioners.

Mr.Kuldeep Singh, Advocate
for respondent No.1.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Kuldeep Singh and Saroop Singh against respondents Gurdip Singh and State of Punjab, challenging the impugned judgment dated 07.12.2015 passed by learned Addl. Sessions Judge, Gurdaspur, vide which the appeal filed by the complainant-respondent No.1 against the judgment of acquittal dated 04.11.2011 passed by learned JMIC, Gurdaspur, was accepted and the matter was remanded back to the trial court with a direction to decide the same afresh after giving sufficient opportunities to the prosecution as well as accused to adduce their entire evidence.

From the record, I find that the challan was presented against

accused-petitioners in case FIR No.197 dated 29.09.2008. The brief facts of the case as noted down in the judgment passed by learned JMIC, Gurdaspur, are as under:-

“2. The brief facts of the prosecution's story are that this case was registered against the accused on the statement of Gurdeep Singh s/o Ujjagar Singh that he is resident of Village Chur Chak and retired from BSF. He moved an application in the office of Ld. Deputy Commissioner, Gurdaspur that accused Kuldeep Singh s/o Saroop Singh and Saroop Singh s/o Gurdit Singh r/o Village Chur Chak has taken illegal possession of the land measuring 5 kanals 7 marlas, belonging to Gram Panchayat of Village Chur Chak and violated the provisions of Village Common Land Act. They have also committed mischief by destroying the land marks raised at the time of demarcation, which were affixed by the authority of public servant. Thereafter, an application Mark-A was received by ASI Jaswinder Singh. He prepared site plan Ex.PB. The statements of the witnesses were recorded. The copy of letter given to District Magistrate Ex.PC and letter received from DDPO is Ex.PD and report of DA legal is Ex.PE. On the basis of which FIR Ex.PA was registered and inquest report is Ex.PF. Shajra Akash Ex.PG, copy of Jamabandi Ex.PH was also taken into possession. The statements of witnesses were recorded. After the completion of necessary investigation, the challan against the accused was presented in the court for his trial for the offences under section 427/434 IPC 130A of the Pb. Village Common Land Act.”

The prosecution examined-in-chief PW-1 ASI Jaswinder Singh and thereafter, the evidence of the prosecution was closed by order.

As there was no cogent evidence on record, therefore, learned JMIC, Gurdaspur, acquitted the accused-petitioners as stated above. An appeal was filed by the complainant-respondent No.1 and the same was also allowed by learned Addl. Sessions Judge, Gurdaspur, vide judgment dated 07.12.2015 and remanded the matter back.

Aggrieved from the above-said judgment dated 07.12.2015, present revision petition has been filed.

Notice of motion was issued. Learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the impugned judgment dated 07.12.2015 shows that learned Addl. Sessions Judge, Gurdaspur, has held that charges were framed in this case on 15.03.2010. Thereafter, total seven opportunities were granted to the prosecution to conclude its evidence. Out of those seven dates, learned Presiding Officer was on leave on 28.04.2011 and 05.09.2011, as such, only five effective opportunities were granted to the prosecution to produce its entire evidence. No coercive method was used by learned trial court to procure the presence of the witnesses. PW-1 ASI Jaswinder Singh, Investigating Officer, was examined-in-chief on 15.07.2011 and his cross-examination was deferred on the request of learned counsel for accused. Thereafter, this witness was again present on 21.09.2011 but could not be cross-examined. As such, he was bound down for 17.10.2011 but he did not turn up on that day. Despite that he was not summoned throughailable or non-bailable warrants of arrest. Similarly, summons issued to complainant Gurdeep Singh to appear on 21.09.2011 were received back duly served but there is no mention of the same in interim order dated 21.09.2011 and no effort was made to procure the presence of the complainant by issuingailable or non-bailable warrants.

Learned lower Appellate Court further held that perusal of file shows that summons were issued to witnesses only on three occasions and total three summons were issued. All the witnesses were not even summoned once.

In view of the findings given by learned Addl. Sessions Judge, Gurdaspur, I find that these are correct, as per evidence and law. Nothing has been pointed out as to how the findings given by learned lower Appellate Court are perverse or against the record. As no proper opportunity has been given to the prosecution to produce the witnesses, therefore, learned Addl. Sessions Judge, Gurdaspur, has rightly set aside the judgment passed by learned trial Court and matter has been rightly remanded back. As already discussed by learned lower Appellate Court, some of the witnesses mentioned in the list of witnesses, were not sent notice even once.

In view of the above discussion, I find that impugned judgment dated 07.12.2015 passed by learned Addl. Sessions Judge, Gurdaspur, is correct, as per evidence and law and does not require any interference from this Court.

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

February 22, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No