

**In the High Court of Punjab and Haryana at Chandigarh**

CRR No.2361 of 2017 (O&M)

Date of decision: November 20, 2017

Hari Singh.....Petitioner

Versus

State of Punjab and others .....Respondents

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr.D.S.Bhinder, Advocate for the petitioner.

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**ARVIND SINGH SANGWAN, J.**

The challenge in this revision petition filed under Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) is to the order dated 6.6.2016 passed by the trial Court acquitting the respondents-accused in FIR No. 143 dated 11.9.2014 under Sections 283, 447 and 511 of the Indian Penal Code, 1860 ('IPC' for short) registered at Police Station Nathana District Bathinda and the judgment dated 23.3.2017 passed by the Lower Appellate Court dismissing the appeal filed by the petitioner-complainant. Hence, the present revision petition .

Brief facts of the case are that the petitioner-complainant moved an application before the Police to the effect that on 10.7.2014, the accused persons had installed poles and constructed a wall on the public path, on the outskirts of the village and had caused obstruction and tried to

take forcible possession of the Panchayat street. On this allegation, the FIR was registered. On completion of investigation, challan was presented and respondents were charge-sheeted under Sections 283, 447 read with Section 34 IPC.

Prosecution, in its evidence, examined eight witnesses including the Investigating Officer and, thereafter, the evidence was closed.

The accused persons in their statements under Section 313 Cr.P.C denied all the allegations and pleaded false implication. However, no defence evidence was led.

Petitioner examined himself as PW1 and deposed on the line as per the allegations in the FIR. His version was supported by PW3 Malkiat Kaur and PW4 Gurjant Singh as well as PW5 Sadha Singh. PW6 Assistant Sub Inspector Sadhu Singh Investigating Officer proved on record the complaint and the other documents relating to the investigation of the case.

PW7 Sukhwinder Singh, Patwari stated that on 29.8.2014, he had demarcated the disputed Khasra No.118/2/2,81/2/2 and 73 and as per record, the same was found to be belonging to Darshan Singh, Baldev Singh and Mehngal Singh. It was further stated that there was a street in Khasra No.73 which was not brick lined by the Panchayat. He has further stated that this part of land is not in possession of the Gram Panchayat and proved the report Exhibit PW6/D and revenue record Exhibits PW7/A to PW7/C. Similar statement was made by PW8 Parbodh Chander Kaungo.

The trial Court, vide its judgment dated 6.6.2016 acquitted the respondents-accused holding that the ingredients of Sections 283 and 447 IPC are not made out. Thereafter, the petitioner filed an appeal before the

lower appellate Court and vide judgment dated 23.3.2017, the same was dismissed.

The operative part of the judgment of the lower appellate Court is as under:-

“ I have heard Sh. S.S.Jeeda, learned counsel for the appellant and Sh. S.S.Bains, counsel for the respondents and have gone through the record carefully.

The appellant/complainant has filed the present appeal challenging the judgment and order vide which the respondents have been acquitted of the charges framed against them. The contention of appellant is that he has fully proved that the respondents with the common intention have installed the poles and constructed the wall on the path in such a way in order to cause obstruction on the public way and they have done all the acts with the intention to take forcible possession of the pahi. The witnesses examined by the appellant have fully supported the case of the complainant but the learned lower court has not appreciated this fact has wrongly observed that there is no document on the file to prove that the property in dispute is owned by the panchayat. Learned lower court has wrongly acquitted the respondents and request has been made to accept the appeal and to convict the respondents.

Counsel for the respondents has submitted that there is no illegality and infirmity in the judgment and order passed by the learned lower court. The appellant has alleged that the respondents have installed the poles and constructed the wall on the path which has caused obstruction and the people of the village have suffered a lot. But the appellant has failed to prove all these facts. It has not been proved that the appellant has any concern with the property in dispute. It has also not been proved as to who is the owner of the land. None of the villager has stepped into the witness box. Learned lower court has rightly observed that the appellant has failed to prove the charges beyond reasonable shadow of doubt and

has rightly acquitted the respondents. Request has been made to dismiss the appeal.

The respondents have been charge sheeted for the offence punishable under section 283 and 447 of IPC for having installed the poles and constructed the wall on the path in order to cause obstruction in the public way and in order to take forcible possession of the pahi. The appellant/complainant has appeared in the witness box as PW1. In his examination in chief he has alleged that the respondents have tried to take forcible possession of the panchayat street by constructing the wall. He was cross examined at length. In his cross-examination also he has stated that the street in dispute is neither the ownership of panchayat nor is the ownership of accused/respondents. He has further stated that he does not know who is the owner of this land. He has further stated that he can not produce on record any document except the writing to prove that this street is being used as a street for the last 42-45 years but he has not produced on record this writing. PW-2 Beant Singh in cross-examination has also stated that he can not tell the khasra number in which the land in dispute is situated. He has further admitted that the land in dispute is not the ownership of gram panchayat. PW4 did not support the case of the prosecution and was declared hostile. PW6 ASI Sadhu Singh the IO has admitted in his cross-examination that no Kanungo or higher official has ever demarcated the land in dispute. He has further admitted that the work done by the gram panchayat is always entered in the register maintained by the gram panchayat and accordingly the report is sent to the higher officials. He has admitted that in the present case no such report was ever sent. The most important witness is PW-7 Patwari Sukhwinder Singh. In his cross-examination he has admitted that as per record brought by him the land in dispute is neither the ownership of the gram panchayat nor is in possession of the Gram Panchayat. Similarly, PW8 Kanungo Parbodh Chander has stated that the land in dispute is private and it is not the panchayat land.

From the entire evidence led by the prosecution, it has

nowhere been proved that the land in dispute is ownership of gram panchayat. The appellant has not produced on record any document or the revenue record to show that the land which is alleged to be constructed by installing poles belongs to gram panchayat or the appellant nor the appellant has examined the owners of the khasra numbers in whose land the appellant has alleged to have installed the poles by the respondents. None of the owner has appeared in the witness box. As per the report of Kanungo Ex.PW6/D the street in khasra number 118/2/2 and 81/2/2 is a private street and the same has been closed by its owners. Learned lower court has rightly observed that the appellant/prosecution has failed to prove the ingredients of section 283 and 447 of IPC. Learned lower court has rightly observed that the prosecution has failed to prove the charges against the accused persons beyond reasonable shadow of doubt and has rightly acquitted the accused-respondents from the charges framed against them. There is no illegality, infirmity in the judgment passed by the learned lower court.

In view of my aforesaid discussion, this appeal is dismissed and judgment dated 6.6.2016 passed by the learned trial Court is upheld. Copy of this Judgment along with lower court record be returned back. File be consigned to the record room."

It is submitted on behalf of the petitioner that it is proved from the statements of PW7 and PW8 that the portion where the respondents-accused have fixed the pole and are trying to raise a wall is part of Panchayat land and, therefore, the Courts below have wrongly held that it is not a panchayat street. It is also stated that the other witnesses PW2 and PW5 have also stated that the street is a public street and used by them for the last 42-45 years.

After hearing the learned for the petitioner, I find no merit in the present petition.

Except the oral statement of the petitioner and other witnesses, no other document is produced to prove that the land in dispute is under the ownership of Gram Panchayat. The petitioner has further failed to prove on record the identity of the land to show that the construction of wall or installation of pole is on the land which belong to the Gram Panchayat or petitioner. The petitioner has neither examined any witnesses of the Gram Panchayat nor has produced on record any document with the Gram Panchayat at any stage nor lodged any complaint with the Police or administrative authority that the accused persons have encroached upon the Panchayat land. It has come in the report of Kanungo Exhibit PW6/D that the street comprising in Khasra No. 118/2/2 and 81/2'/2 is a private street and the same has been closed by its owners and, therefore, the petitioner could not prove that it is a public street.

In view of the same, both the Courts below have rightly held that the petitioner has failed to prove the ingredients of Sections 283 and 447 IPC and I find no illegality in the judgment passed by the Courts below. This revision is, accordingly, dismissed.

**(ARVIND SINGH SANGWAN)**  
**JUDGE**

**November 20, 2017**  
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Whether speaking/reasoned: Yes/No  
Whether Reportable: Yes/No

