

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

**CRA-S No.661-SB of 2016 (O&M)
Decided on: 13.01.2018**

Jagjit Singh Sarpanch

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Kiran Verma, Advocate
for the appellant.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting-aside the judgment dated 22.01.2016 passed by the Lower Appellate Court vide which the appellant was held guilty for offences punishable under Sections 409 and 201 of the Indian Penal Code, 1860 (in short 'IPC') and was sentenced to undergo rigorous imprisonment for a period of 01 year each and to pay a fine of Rs.2,000/- each under the aforesaid sections and the judgment dated 04.01.2014 passed by the trial Court acquitting the appellant was set-aside by the Lower Appellate Court.

Brief facts of the case are that the Block Development Panchayat Officer (in short 'the BDPO'), Kharar, District Mohali submitted a complaint on 28.09.2010 to Station House Officer, Police Station Kharar City to register an FIR against the appellant – Jagjit Singh (the then Sarpanch) with the allegations that on 24.09.2010 at about 10:00 AM, he was presiding over a meeting of Gram Panchayat of village Parchh regarding the complaint given by other members of

the Panchayat i.e. Panches to pass a no confidence motion/resolution against the appellant – Jagjit Singh. It is further stated that when the proceedings were going on and the signatures of the members were obtained, the appellant – Jagjit Singh snatched the proceeding register and ran away. On this allegation, the FIR No.44 dated 02.04.2011 under Sections 409, 379 and 201 IPC at Police Station City Kharar, Mohali was registered against the appellant. Thereafter, the appellant was arrested and the report under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted on 15.06.2011 qua which the appellant did not plead guilty and claimed the trial. Thereafter, the trial Court framed the charges under Sections 409 and 201 IPC.

The prosecution in order to prove its case examined PW1 – Indervir Singh, Halqa Patwari, who proved on record the Jamabandi Ex.PW1/A pertaining to the year 2007-08.

PW2 – Pal Singh, Member Panchayat stated that on 24.09.2010, he along with other members of the Panchayat was present in the office of BDPO, Kharar and the accused – Jagjit Singh who was Sarpanch of the village, ran away with the proceeding register.

PW3 – Rattan Singh, another Member Panchayat also deposed on the same line.

PW4 – Inspector Parshotam Chand (Retired), the Investigating Officer deposed that he got the FIR Ex.PW4/A registered on the complaint made by the BDPO – Malwinder Singh. This witness proved the site plan Ex.PW4/B, personal search memo of the appellant Ex.PW4/C, arrest memo Ex.PW4/D and the enquiry report conducted by him Ex.PW4/E.

PW5 – Kuldeep Singh, another member of the Panchayat also deposed on the same line that when the members have signed the resolution in the meeting, the appellant – Jagjit Singh fled away with the proceeding register.

The complainant – Malwinder Singh, BDPO was examined as PW6 has also stated that he was conducting a meeting and the accused/appellant – Jagjit Singh fled away with the proceeding register. This witness has further deposed that on 28.09.2010, he moved an application against the accused/appellant Ex.PW6/A before the Incharge Police Station Kharar.

PW7 – Hakam Singh, Panchayat Secretary also deposed on the same line.

Thereafter, the evidence of the prosecution was closed by Court order on 18.02.2013.

The statement of the appellant/accused was recorded, thereafter, under Section 313 Cr.P.C. and he denied all the incriminating evidence put to him and pleaded false implication.

The trial Court, after hearing both the parties acquitted the appellant/accused holding that the prosecution has failed to prove the case of the appellant – Jagjit Singh beyond reasonable doubt. While observing so, the trial Court has recorded a finding that it has come in the cross-examination of PW5 – Kuldeep Singh, Member Panchayat where he admitted that accused – Jagjit Singh being Sarpanch has filed application against many people of the village including PW3 – Rattan Singh and PW2 – Pal Singh, Member Panchayat regarding illegal sale of shamlat land through their attorneys. The trial Court further recorded

a finding that PW2 – Pal Singh has also admitted in his cross-examination that previously Jagjit Singh, Sarpanch has given an application against him as well as PW3 - Rattan Singh, Member Panchayat, regarding sale of shamlat lands and PW3 – Rattan Singh has also stated that he has never made any such statement before the police against the appellant – Sarpanch.

The trial Court has heavily relied upon the statement of PW6 – Malwinder Singh, BDPO who is the complainant to hold that he has failed to produce on record any photocopy of the said proceeding register and this witness has admitted that on Ex.D1, he has put the signatures. The trial Court has further held that PW6 has no record regarding the proceedings initiated on the said date, thus, on appreciation of the evidence, the trial Court held that PW2 – Pal Singh, PW3 – Rattan Singh and PW7 – Hakam Singh were inimical towards the appellant – Jagjit Singh, Sarpanch as he has initiated proceedings against them regarding illegal sale of shamlat lands.

The State filed an appeal before the Lower Appellate Court and the Lower Appellate Court vide its impugned judgment dated 22.01.2016 while accepting the appeal, set-aside the judgment of acquittal passed by the trial Court dated 04.01.2014 and convicted the appellant under Sections 409 and 201 IPC.

Counsel for the appellant has argued that from a perusal of the statement of PW2 – Pal Singh, PW3 – Rattan Singh and PW7 – Hazkam Singh, it is proved on record that the appellant – Jagjit Singh in the capacity of Sarpanch was pursuing the remedy to protect the interest of the Gram Panchayat as these persons have illegally sold the

shamlat land through their Panches and this fact is duly proved on record from their cross-examination and the Lower Appellate Court has ignored this fact. Counsel for the appellant has further argued that even as per the statement of PW6 – Malwinder Singh, BDPO, the incident occurred on 24.09.2010 and he has given the complaint to the police on 28.09.2010 i.e. after 04 days and no explanation is given in the complaint Ex.PW6/A. It is further argued that, in fact, the prosecution has failed to prove that there was a valid meeting on 24.09.2010 or that there was any proceeding undertaken on that day and as such, the very existence of the proceeding register, even photocopy of which could not be produced by the complainant, is highly doubtful.

Counsel for the appellant has relied upon Section 19 of the Punjab Panchayati Raj Act, 1994 (in short 'the Act of 1994') which stands omitted by the Punjab Act No.13 of 2011 as it was on the statute book when the alleged occurrence took place on 28.09.2010. Counsel for the appellant has further submitted that a perusal of Section 19 of the Act of 1994, show that for holding a meeting for no confidence motion against a Sarpanch, the BDPO shall within a period of 15 days of the receipt of the application under sub-section (1) convene a meeting of a Gram Panchayat by giving a 07 days clear notice for discussing and taking a decision on no confidence motion. Counsel for the appellant has further submitted that the prosecution has miserably failed to produce on record any such notice issued by the complainant/PW6 – Malwinder Singh, BDPO to demonstrate that a meeting was scheduled to be held on 24.09.2010 as no such notice has been exhibited on record.

Lastly, counsel for the appellant has relied upon the judgment “*Naresh Kumar vs State of Himachal Pradesh*”, 2017(3) RCR (Criminal) 852, where the Hon'ble Supreme Court has held that the Appellate Court before setting-aside an order of acquittal is required to record a finding that conclusions of the trial Court were so perverse and wholly unreasonable so as not to be a plausible view by misreading and incorrect appreciation of an evidence. It is, thus, submitted that the Appellate Court, while reversing the order of acquittal has not recorded a finding that the judgment passed by the trial Court is either perverse or wholly unreasonable.

In reply, counsel for the State has argued that the finding recorded by the Lower Appellate Court is based on re-appreciation of evidence as it is proved from the statement of all the prosecution witnesses that during the course of meeting conducted by the complainant – BDPO, the appellant has snatched the proceeding register and ran away, thus, the Lower Appellate Court has rightly recorded a finding that the appellant has committed an offence punishable under Sections 409 and 201 IPC.

After hearing counsel for the parties, I find merit in the present appeal on the following reasons:-

a) The appellant has proved from the cross-examination of PW2 – Pal Singh, PW3 – Rattan Singh and PW7 – Hakam Singh, all the Panches/members of the Panchayat that the appellant in the capacity of a Sarpanch has moved complaints against them for sale of shamlat land through their power of attorneys and thus, these

persons were inimical towards the appellant, the then Sarpanch of the village.

b) The aforesaid fact is duly admitted by the abovesaid 03 prosecution witnesses and the trial Court has relied upon their statements by observing that the appellant as a Sarpanch was proceeding against many villagers including the aforesaid prosecution witnesses regarding sale of shamlat land of the village.

c) From the statement of the complainant – Malwinder Singh, BDPO, it is not proved that he had issued any valid notice in terms of Section 19 of the Act of 1994 (which stands omitted, thereafter vide Act No.13 of 2011). The operative part of Section 19 of the Act of 1994 which was in vogue at that relevant time is reproduced as below:-

“19. No Confidence motion against Sarpanch –

(1) An application regarding intention to move a motion of no-confidence against a Sarpanch be made to the Block Development and Panchayat Officer by a 1[majority of Panches].

Provided that no such application shall be made unless a period of two years has elapsed from the date on which the Sarpanch assumed his office.

(2) The Block Development and Panchayat Officer shall, within a period of fifteen days of the receipt of application under sub-section(1), convene a meeting of the 1[Gram Panchayat] by giving seven clear days in notice, for discussing and taking

decision on the no-confidence motion.”

A perusal of the trial Court record show that neither any such notice was produced by the complainant – PW6 before the police nor any notice was exhibited during the prosecution evidence.

d) From the statement of PW6 – Malwinder Singh, BDPO, it has also come on record that he has not retained the photocopy of the alleged register which is stated to be snatched by Jagjit Singh, Sarpanch before he ran away with the proceeding register and thus, the trial Court has rightly held that there is no proof of destruction of the said proceeding register by the appellant/accused.

e) Even a perusal of the statement of PW7 – Hakam Singh, Panchayat Secretary, show that he has made all oral deposition that a meeting was convened on 24.09.2010 on an application given by members of the Panchayat and this witness also could not prove on record any complaint made by member of the Panchayat or notice issued by the BDPO. Though, this witness, in cross-examination, has admitted that the appellant – Jagjit Singh moved an application in Police Station Mullanpur against members of the Panchayat namely Pal Singh and Rattan Singh about sale of 14-15 acres of shamlat land.

f) PW6 – Malwinder Singh, BDPO/complainant, while deposing before the Court could not given any explanation as to why the complaint was lodged on

28.09.2010 vide Ex.PW6/A and therefore, there is no explanation of delay of 04 days despite the fact that this witness is an official witness and he would have acted promptly to take action against the accused on the same day.

g) A perusal of statement of PW4 – Retired Inspector Parshotam Chand also show that when he conducted an enquiry, he had recorded the statement of BDPO alone. The operative part of his statement reads as follows:-

“In an enquiry only the statement of BDPO was recorded and no statement of witness was recorded in the enquiry.”

This fact itself show that the alleged enquiry was done at the back of the appellant/accused without affording any opportunity to him and even, this witness could not produce any document from the office of BDPO that the meeting was scheduled to be held on 24.09.2010 as he has admitted that no investigation was done by him regarding the incident on 24.09.2010.

*h) In the light of judgment of the Hon'ble Supreme Court in **Naresh Kumar's case (supra)**, the Lower Appellate Court has neither recorded any finding that the judgment passed by the trial Court is either perverse or wholly unreasonable or is based on misreading and mis-appreciation of evidence to set-aside*

the judgment of acquittal passed by the trial Court.

i) It is well settled principle of law as held by the Hon'ble Supreme Court in “Mrinal Das and others vs The State of Tripura”, 2011(9) SCC 479 that while entertaining the appeal against the judgment of acquittal where 02 views are possible, the view giving benefit of doubt to the accused should be upheld.

j) A careful perusal of the evidence led by the prosecution, on re-appreciation of the evidence from the lower Court record, I find that the ingredients of Sections 409 and 201 IPC are not proved and the finding recorded by the trial Court acquitting the appellant/accused is based on correct appreciation of evidence.

In view of the above, the present appeal is allowed, the judgment of conviction and order of sentence dated 22.01.2016 passed by the Lower Appellate Court convicting the appellant under Sections 409 and 201 IPC and sentencing him to undergo 01 year (each) rigorous imprisonment and to pay a fine of Rs.2,000/- (each) under the aforesaid Sections is set-aside.

(ARVIND SINGH SANGWAN)
JUDGE

13.01.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No