

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

CRM No.A-1672-MA of 2016 (O&M)
Date of decision: April 23, 2018

Daro Bai

...Applicant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Kamal Narula, Advocate
for the applicant.

INDERJIT SINGH, J.

Applicant-Daro Bai has filed this application under Section 378 (3) Cr.P.C. seeking permission for leave to appeal against State of Punjab and other respondents, challenging the impugned judgment dated 18.03.2016 passed by learned Addl. Sessions Judge, Fazilka, vide which the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that judgment of acquittal has caused grave miscarriage of justice. It is, therefore, prayed that leave to appeal be granted.

From the record, we find that challan was presented against Wassan Singh and 23 other accused in case FIR No.141 dated 07.06.2003 under Sections 427, 436, 440, 441, 379, 347 and 342 IPC by the police of Police Station Jalalabad. The brief facts of the case as noted down by

learned trial Court, in the impugned judgment are as under:-

“2. Briefly stated facts of the present case are that complainant-Desa Singh moved an application against Wassan Singh and others alleging therein that he is resident of Village Ghubaya, Tehsil Jalalabad and land belonging to Kashmiri Lal son of Jhagi Ram was earlier cultivated by his father Jagtar Singh. After the death of his father he is cultivating the said land measuring 19 Kanals 1 Marla. The said land is in their cultivating possession for the last about 50 years. Kashmiri Lal aforesaid was resident of Malout and there was no chance of delivery of possession of the said land to Kashmiri Lal, as possession of complainant and his father was old one. The complainant has further alleged that Wassan Singh son of Tara Singh proclaimed himself to be miscreant and smuggler and purchased the said land on cheap rates from Kashmiri Lal about 10-12 years ago. Wassan Singh was trying to get the land vacated from the complainant and also inflicted injuries on his person. A case in this regard is pending in the Court. Wassan Singh's sons have been convicted and sentenced for imprisonment and appeal is pending before the learned Sessions Judge, Ferozepur. Wassan Singh has further sold the land to Mohan Lal, Jagdish Lal, Balkar Singh and Dilawar Singh and all of them have formed an unlawful assembly and forcibly tried to take possession of the said land. In this regard complainant also obtained a stay order dated 24.12.2002 from the Court of Sh.L.K.Singla, the then learned Civil Judge (Junior Division), Fazilka and stay order dated 03.12.2002 has also been passed by the Revenue Court.

3. The complainant has further alleged that Wassan Singh and others having good relations with police and on 29.12.2002 in the evening along with S.H.O. Police Station Sadar Jalalabad and other police officials from the Police Post Ghubaya came present at the spot and damaged the wheat crop sown by complainant. The said crop was damaged by ploughing the land through HMT-5911 Tractor being driven by Swaran Singh, who was also armed with a revolver. All these persons tried to forcibly occupy his land. Daro Bai wife of complainant and Paramjit Singh son of complainant were caught by the police and at the instance of Wassan Singh were given beatings and were also illegally taken to the Police Post Ghubaya. A Jhugi (Hut) existing on the said land along with house hold articles were also set on fire by Wassan Singh and others on Lalkara raised by Harikrishan and Pran. Currency notes of Rs.5,000/- were also lying in the Jhugi (Hut) and the accused persons armed with Guns damaged the same. The complainant suffered a loss of Rs.50,000/- approximately. Remaining articles were brought to the Police Post Ghubaya. Entire occurrence was witnessed by wife and children of complainant along with Kashmir Singh son of Surjan Singh and many other persons. The complainant escaped from the place of occurrence and saved his life, otherwise accused persons might have killed him. The complainant alleged that

he is a poor person and belonging to Rai Sikh community. Accused Wassan Singh and others have given beatings to his wife and children and also damaged Jhugi (Hut) despite passing of stay order by the learned Civil Court and have also tried to forcibly occupy the land. The complainant also moved earlier an application dated 02.01.2003, but no action was taken.

4. On the aforesaid application moved by the complainant FIR No.141 dated 07.06.2013 Under Section 427, 436, 440, 441, 379, 347, 342 of Indian Penal Code was registered at Police Station Sadar Jalalabad. Later on cancellation report was presented before the learned Judicial Magistrate Ist Class, Jalalabad (West), but complainant protested the cancellation report. The learned Illaqa Magistrate thereafter summoned all the accused to face trial in the present case vide order dated 21.05.2012 passed by the then learned Sub Divisional Judicial Magistrate, Jalalabad (West).

5. It is pertinent to mention here that accused No.1 to 5 died before the appearance before the learned Judicial Magistrate Ist Class, Jalalabad (West) and proceedings against these accused were abated accordingly. The accused Rajbir Singh did not appear before the learned Illaqa Magistrate and was declared Proclaimed Offender. Remaining accused appeared and the learned trial Court after complying with the provisions of Section 207 Cr.P.C. supplied the copies of relevant documents to them free of costs.”

Finding prima facie case, the accused were charge-sheeted under Sections 148, 447, 379, 427 and 436 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Naib Court, Harish Kamboj, who mainly brought the record regarding FIR No.141, which was registered on the statement of Desa Singh, as per order of this Court in a petition filed by Desa Singh against Wassan Singh and others. PW-2 Paramjit Singh and PW-3 Daro Bai mainly deposed as per prosecution version. PW-4 DSP Bhupinder Singh deposed regarding registration of FIR on the basis of order of this Court in CRM No.21215-M of 2003.

At the close of the prosecution evidence, the accused were

examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied all the incriminating evidence against them and pleaded their false implication. In defence, accused examined DW-1 Sub Inspector Shinder Singh, CIA Incharge, PW-2 Charanjit Singh Patwari and DW-3 MHC Paramjit Singh

Learned trial Court, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 18.03.2016.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

We have heard learned counsel for the applicant and have gone through the record.

The perusal of the record shows that the findings given by learned trial Court are as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the Court below. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court.

Even, at the time of arguments, learned counsel for the applicant admitted that the entries in khasra girdawari are in favour of the respondent. We have also gone through the evidence of PW-2 Paramjit Singh. In his cross-examination, he admitted that since 27.12.2002, Wassan Singh and after his death, his heirs are cultivating the land in dispute. He voluntarily stated that remaining wheat crop was harvested by them. He showed ignorance regarding suit filed by Wassan Singh titled as 'Wassan

Singh vs. Desa Singh and other', which was decreed in favour of Wassan

Singh on 05.08.2009. He also showed ignorance regarding filing of criminal complaint by his father against Wassan Singh etc. or acquittal of Wassan Singh therein vide order dated 05.08.2009. No medical evidence regarding any injury etc. has been produced. The police has already filed the cancellation report. Except the statement of PW-2 Paramjit Singh and PW-3 Daro Bai, there is nothing on the record to show their possession. Daro Bai has also stated in cross-examination that land was purchased by Wassan Singh in the year 1991-92. The share from the crop was being paid to Wassan Singh by her husband. She showed ignorance that Wassan Singh filed an ejectment petition against her husband on 10.06.1996 in the Court of AC Ist Grade-cum-Collector, Jalalabad or if an ejectment order was passed against his husband on 14.02.2001 from the land in dispute. She also showed ignorance that her husband filed an appeal, which was dismissed.

Learned trial Court, after discussing the evidence and law, has rightly acquitted the accused. In no way, the findings can be held as perverse or against the evidence.

In view of the above discussion, we find that the impugned judgment dated 18.03.2016 passed by learned Addl. Sessions Judge, Fazilka, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

April 23, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No