

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CRM-A-1716-MA of 2017 (O&M)
Date of Decision: 22.05.2018**

Rajinder Kumar

...Applicant-appellant

VERSUS

Pirthi and others

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Narender Pal Bhardwaj, Advocate
for the applicant-appellant.

SURINDER GUPTA, J.(Oral)

Heard.

Present complaint was filed with the allegation that on the land measuring 250 sq. yards in *khasra* no. 24//12, accused were creating hurdles in the work of construction of *Anganwari* . Illegal encroachment made by accused persons was removed on 28.07.2013 under the orders of competent authority. On the intervening night of 28/29.07.2013, accused persons again put their cow dung cakes and bricks on the land and also put soil in the foundation, which was dug by the *panchayat* . The complainant has alleged in complaint that when he and Manoj *panch* tried to stop the accused persons, they threatened them with dire consequences.

After recording of preliminary evidence, accused no. 1 to 4 as arrayed in complaint were ordered to be summoned and charge-sheeted for offences punishable under Sections 186/427/447 read with Section 34 IPC.

In after charge evidence, the complainant could not produce any witness, who could depose that the accused had obstructed the complainant in discharge of his public function; done any mischief or criminally

trespassed over the disputed land. CW-1 Manoj Kumar had deposed as

witness of taking of possession from the accused. Complainant has stated that he was not present or had seen the accused persons putting soil in foundation dug at the spot. In the absence of any eye-witness account, trial Court gave benefit of doubt and acquitted all the accused.

Learned counsel for the applicant-appellant has argued that trial Court has failed to see the evidence that have come on record. Possession from the respondents was taken on 28.07.2013 and on the intervening night of 28/29.07.2013, cow dung cakes were stored at the spot alongwith bricks and foundation dug by the *panchayat* for construction of *Anganwari* were filled with earth. It was only the accused persons, who were interested in land in question and presumption is that they had done the mischief at night.

I find no reason to agree with submission of learned counsel for applicant-appellant. No such presumption can be raised against the accused in the absence of eye-witness account. As to who had put cow dung cakes over the suit land and who has filled the foundation is a matter which could be proved by leading direct evidence and not by drawing presumption. Trial Court has committed no error while acquitting the accused for want of evidence.

I find no reason to interfere with the conclusion drawn by learned trial Court. No ground is made out to grant leave to appeal under Section 378 (4) Cr.P.C. as sought by applicant-appellant. This application has no merit and the same is dismissed. Consequently, the appeal is also dismissed.

May 22, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No