

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. CRM-M-25198-2015

Kashmir Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

2. CRA-S-3003-SB-2015 (O&M)

Kashmir Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

**Date of decision: 23.08.2018**

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**PRESENT:** Mr. Amandeep Kakkar, Advocate for  
Mr. Raj Kumar Kakkar, Advocate  
for the petitioner (in CRM-M-25198-2015) and  
for the appellant (in CRA-S-3003-SB-2015).

**RAMENDRA JAIN, J. (ORAL)**

Through this common judgment, two above titled cases are being disposed, assailing judgment dated 12.03.2015 of the Ist Appellate/Revisional Court, Ferozepur, whereby revision filed by the petitioner for enhancement of sentence of respondent No.2-Harpinder Singh, who vide judgment of conviction and order of sentence dated

15.09.2011 of the learned Sub Divisional Judicial Magistrate, Zira, was convicted under Sections 430 and 432 IPC and sentenced to undergo rigorous imprisonment for a period of 2 years under each head and pay a fine of ₹ 500/-, in default thereof, further undergo rigorous imprisonment for a period of 7 days each, was dismissed, whereas appeal filed by respondent No. 2, against his conviction and sentence was allowed. Resultantly, he was acquitted of charges framed against him.

For brevity, the facts are being extracted from CRM-M-25198-2015.

Briefly, respondent No. 2 was booked, tried and held guilty under Sections 430 and 432 IPC on the complaint of petitioner that on 09.10.2004, respondent No. 2 demolished sanctioned watercourse of the petitioner passing through his fields thereby causing restraint of water supply to the fields of the petitioner. Respondent No. 2 was convicted and sentenced vide judgment and order dated 15.09.2011, in the manner as narrated above.

Being aggrieved, respondent No. 2 filed appeal against his conviction and sentence before the Ist Appellate Court, whereas the petitioner filed revision for enhancement of his sentence. The Ist Appellate/Revisional Court, after hearing both the sides, accepted the appeal of respondent No. 2, thereby setting aside his conviction and sentence, while dismissing the revision of the petitioner vide impugned judgment dated 12.03.2015.

Learned counsel for the petitioner *inter alia* contends that Section 71 of the Northern India Canal and Drainage Act, 1873 (for short-'the Act of 1873'), does not debar a person from taking any criminal

action to get restored water course. The Ist Appellate/Revisional Court has wrongly set aside the conviction of respondent No. 2, without appreciating the fact that statement of the petitioner was duly corroborated by independent witness PW-4 Joga Singh, qua illegally dismantling of water course by respondent No. 2. The Ist Appellate/Revisoinal Court, also failed to appreciate that the petitioner had a legal right to avail his remedy either under Indian Penal Code or the Act of 1873.

Having given considerable thoughts to the submissions made by learned counsel for the petitioner/appellant, this Court finds both the above titled cases meritless for the reasons to follow:

The Ist Appellate/Revisional Court has rightly observed that it was not clear from the record as to whether the petitioner ever got restored his water course by moving appropriate application under Section 30FF(2) of the Act of 1873, before the Canal Authorities nor he led any evidence in this respect. Therefore, it is not ascertainable as to whether respondent No. 2 ever demolished the sanctioned water course in question in order to obstruct water supply going to the fields of the petitioner. Had it been so, in that eventuality, the petitioner must have got restored the water course in question.

According to the petitioner, the water course was demolished by respondent No. 2 with the help of a tractor which, un-disputedly, was never taken into possession. Therefore, link evidence is missing in this case to connect respondent No. 2 with alleged commission of crime. PW-4 Joga Singh, did not ever depose that he was accompanying the petitioner or was present at the spot. Above all, respondent No. 2 had already suffered agony of protracted trial for almost eleven years from year 2004, till the passing of

impugned judgment on 12.03.2015. Therefore, it is desirable that after 14 years both the sides may set at rest to live in peace.

I have carefully gone through the impugned judgment and find no illegality or perversity in the same.

The instant petition bearing CRM-M-25198-2015 as well as the connected appeal CRA-S-3003-SB-2015 (O&M), filed by the petitioner are dismissed.

**August 23, 2018**

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**( RAMENDRA JAIN )  
JUDGE**

**Whether speaking/reasoned                      Yes/No**

**Whether reportable                                Yes/No**