

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

CRR-2264-2012(O&M)

Date of decision:-9.2.2018

Harbans Singh

...Petitioner

Versus

Bukan Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S. Narula, Advocate
for the petitioner.

Mr.Sanjay Gupta, Advocate
for respondents No.1 to 3 and 5.

Mr.Saurav Khurana, D.A.G., Punjab.

H.S. MADAAN, J.

Bukan Ram, his wife Vidya Devi, sons Lal Chand, Brij Lal and Kumbh Lal, all of them being accused in FIR No.40 dated 29.4.2005 for the offences under Sections 452, 506, 380 and 427 IPC, registered at Police Station Goraya faced trial by Judicial Magistrate Ist Class, Phillaur, which ended in their acquittal vide judgment dated 5.3.2011.

Briefly stated, facts of the case are that the FIR was registered at the instance of Harbans Singh son of Ratta Ram, Deputy Chief Electoral Officer, Chandigarh, who stated that after retiring from the service, he started residing at his ancestral village Matfallu by constructing his house; that on 8.10.2004 at about 5:00 a.m., the accused after demolishing the boundary wall of his house, took away some articles

and also threatened him with dire consequences; that on 9.10.2004, he had reported the matter to SHO, Goraya but no action was taken; that on 26.10.2004, he requested SSP, Jalandhar for lodging FIR but to no effect. However, an inquiry was conducted by DSP, Phillaur and the inquiry report was sent to D.A.(Legal) for his opinion and thereafter the FIR was registered, the accused were arrested and the matter was investigated.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Judicial Magistrate Ist Class, Phillaur finding that charge for offence under Sections 452, 427, 380, 506 IPC was disclosed against the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

To bring home guilt to the accused, the prosecution examined as many as four witnesses, namely, Harbans Singh as PW1, Munsha Ram as PW2, HC Jaswinder Singh as PW3 and ASI Sikander Singh as PW4.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case.

In defence evidence, accused examined Rajinder Singh as DW1 and Shashi Pal as DW2 besides tendering some documents.

Learned trial Magistrate formulated following points for determination:

Whether on 8.10.2004, at about 5 a.m. all the accused criminally house trespassed into house of complainant after demolishing boundary wall and committed theft of articles belonging to the complainant and also criminally intimidated the complainant, if so its effect?

After hearing arguments, learned Judicial Magistrate Ist Class, Phillaur vide judgment dated 5.3.2011 acquitted the accused for the reason that complainant Harbans Singh and Bukan Ram are real brothers and as admitted by complainant, his brother Bukan Ram was residing in the ancestral house having possession thereof since 30-31 years and he has been cultivating his land since then, in that way they are joint owners of the property. Though the complainant in his cross-examination had stated that he had clicked photographs of the property but he neither gave those photographs to the police nor submitted the same in the Court. The complainant further admitted that he had not given any document with regard to ownership of the property stolen by the accused and that on 14.5.2004, one agreement Ex.DA was entered into through Panchayat, vide which Bukan Ram, who had constructed a bathroom and a cattle shed in his property and he was to give Rs.80,000/- to Bukan Ram, the complainant had volunteered to state that he had agreed to give Rs.27,000/- to the accused. The trial Court has further observed that it was agreed that wall of his house which is not straight was to be got straighten/repared by him, that though in his statement to the police, the

complainant stated that accused had committed a theft of Rs.24,500/- lying in the dicky of the motorcycle but while appearing as a witness in the Court he did not say anything in that regard. The trial Court has further observed that nature of the stolen article is also very material since as alleged by the complainant one iron pety/iron box lying in his house since his marriage in the year 1965 and three angle scissors were purchased by him from a scrap Dealer of Chandigarh but no document had been produced on record with regard to such purchase by the complainant. As per own admission of the complainant, accused had been in possession of the ancestral house for the last 30-31 years where the said peti was lying and if accused did not commit theft of the same for so many years, then it is not believable that they would commit theft of peti in the morning without breaking/open the locks since the Investigating Officer (PW4) had stated that the peti was opened after taking key of the lock from the complainant and that it had transpired that peti was lying in the house of Bukan Ram, which the complainant was intentionally not taking showing that complainant had lodged the FIR with ill will and no theft had taken place as alleged by him.

Learned trial Court referring to cross-examination of PW3 HC Jaswinder Singh, a witness of recovery has observed that the prosecution story that the stolen articles were got recovered by the accused in pursuance to their disclosure statements Ex.PW5/D to Ex.PW5/G stood falsified when PW3 Jaswinder Singh admitted in his cross-examination that Harbans Singh took the police to the spot and got recovered his stolen articles. As regards, PW2 Munsha Ram, who had deposed that he has seen the occurrence with his own eyes but the

complainant in his statement, had not said anything in that regard. Then there was delay of one day in lodging the FIR, which had not been explained.

The appeal preferred against the judgment of acquittal passed by the Judicial Magistrate Ist Class, Phillaur was also dismissed by learned Sessions Judge, Jalandhar, which left the petitioner – complainant Harbans Singh aggrieved and he has filed the present criminal revision petition.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the criminal revision petition.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In the present case, I do not find any such illegality or infirmity with the impugned judgments passed by the Courts below much less apparent on the face of these judgments. The impugned judgments are certainly not in violation of settled principles of criminal jurisprudence. No ground for the interference is made out.

The criminal revision petition stands dismissed accordingly.

9.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No