

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2231 of 2013 (O&M)

Date of decision : 7.5.2018

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Kulwant Singh

.....Petitioner

vs.

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. R.K. Shukla, Advocate
for the petitioner.

Mr. Saurav Khurana, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

Gram Panchayat village Pola, Block Sirhind, Police Station Mulepur, Tehsil and District Fatehgarh Sahib through its Sarpanch Gurmail Singh had filed a complaint under Section 13-A of the Punjab Village Common Land (Regulation) Act, 1961, (hereinafter to be referred to as 'the Act') against accused Dharam Singh, Sukhwinder Singh, Karam Singh and Kulwant Singh, all residents of that village, on the allegations that the accused are in illegal occupation of the land belonging to the Gram Panchayat.

The accused were summoned. They put in appearance.

Notice of accusation under Section 13-A of the Act, was served upon them, to which they pleaded not guilty and claimed trial.

During the trial, the complainant adduced the evidence, oral as well as the documentary. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to such accused, but they denied the same, contending that they are innocent. The accused produced certain documents in defence and their evidence was closed. During the pendency of the trial accused Dharam Singh and Karam Singh had died. Proceedings against them stood abated and only Sukhwinder Singh and Kulwant Singh faced trial.

Learned Judicial Magistrate Ist Class, Fatehgarh Sahib, convicted the accused for an offence Under Section 13-A of the Act and instead of imposing substantive sentence, took a lenient view and released the accused on probation on furnishing personal bonds in the sum of Rs.5,000/- with one surety with an undertaking to be of good conduct during the period of one year. The operative part of the judgment passed by the trial Magistrate is as under:-

11. Upon appreciation of the evidence discussed aforesaid and the contentions of the counsel for the parties, it is found that the revenue record, the latest jamabandi Ex.P-5 shows the Gram Panchayat to be the owner of Khasra No. 93, 94 and 95 measuring 7 K-11M, 2K-0M and 7K-0M respectively. The fact that at the time of filing the complaint the accused were in illegal possession is evident from the demarcation report Ex.P3 which was duly proved on record

by office Kanugo Bhupinder Singh as CW2. The contention of the defence counsel that the DDPO has not upheld the illegal occupation of the accused is devoid of merits since the order reveals that it was found that the accused were in illegal possession and the DDPO ordered eviction in favour of the Gram Panchayat after getting the demarcation conducted again. This order nowhere reveals that the DDPO has held that the accused are not in illegal occupation. Had it been so the eviction order would though not, exhibited on record is Mark-A only reveals regarding demarcation conducted and does not say that accused are not in illegal possession.

12.From the documents and oral evidence it is proved on record that the accused are in illegal possession of property of the gram Panchayat and thus they have committed an offence punishable u/s 13A of the Punjab Village Common Land Act and are convicted thereunder. The accused be heard on the quantum of sentence.”

Against the abovesaid order, the accused had preferred an appeal before the Court of Sessions, which was dismissed by learned Sessions Judge, Fatehgarh Sahib, vide judgment dated 5.12.2012, observing as follows:-

6. I have heard learned counsel for the appellants and the learned counsel for the complainant and have also carefully examined the file. The trial court came to the conclusion that the possession of the accused is determined from the demarcation report Ex.P3. A copy of jamabandi for the year 1998-99 shows that the land bearing Khasra No. 93, 94, 95 are Gair Mumkin Grave Yards. The demarcation report Ex.P3 shows that accused Karam Singh and Dharam Singh have sown wheat crop and have installed bore well in some portion of Khasra No. 93 and in Khasra Nos. 93, 95 there are heap of chaff. Then it is recorded that Kulwant Singh son of Karam Singh has constructed a mangers. However, there is no mention of accused Sukhwinder Singh. As stated above, two of the accused namely, Dharam Singh and Karam Singh died during the trial and only two accused namely, Kulwant Singh and Sukhwinder Singh were convicted. Since the name of Sukhwinder Singh does not find mentioned as the person of illegal possession, therefore, his conviction cannot be sustained in the eyes of law under Section 13-A of Punjab Village Common Lands (Regulations) Act,

1961. However, qua Kulwant Singh there is specific report that he is in illegal possession of some portion of land. The case of the complainant was proved not only by the demarcation report Ex. P3 but by the examination of witness of complainant namely CW1 Tej Kaur Sarpanch of Gram Panchayat and nothing came out from her cross examination in favour of said accused. Even the eviction order was passed by DDPO against the present accused holding his illegal possession. However, it is to be noted that the guilt of the accused in the criminal cases are proved beyond all reasonable doubt. In the present case, the illegal possession of Sukhwinder Singh is not proved, therefore, the appeal qua him is allowed and he is acquitted of the notice under Section 13-A of the Punjab Village Common Land (Regulations) Act, 1961 served upon him. The litigation costs paid by him be refunded to him; However, the appeal qua Kulwant Singh accused is found to be without any merit and is hereby dismissed. Trial court file be sent back. Appellate court file be consigned to Record Room.”

Still aggrieved, the accused has approached this Court by

way of filing the present revision petition, notice of which was given.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

It is well settled law that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgments under challenge. This is not the case here. The judgments passed by the Courts below are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. I do not find any illegality or infirmity with the impugned judgments apparent on the face of the same, which might have called for interference by this Court, while exercising revisional jurisdiction. The impugned judgments are certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. There are no defects apparent on the face of such judgments.

The revision petition is found to be without any merit and the same stands dismissed.

7.5.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
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Whether reportable	Yes / No
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