

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

CRR-1387-2016

Date of decision:-23.5.2018

Anil Kumar Nagpal

...Petitioner

Versus

Jagjit Singh @ Lucky and others

...Respondents

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

Present: Mr.B.S. Jaswal, Advocate  
for the petitioner.

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**H.S. MADAAN, J.**

This revision petition is directed against the judgment dated 21.1.2016 passed by learned Additional Sessions Judge, Amritsar dismissing the appeal as well as judgment dated 8.8.2012 passed by Sub-Divisional Judicial Magistrate, Baba Bakala acquitting respondents No.1 to 3 of the charge framed against them.

Briefly stated, the facts of the case are that the criminal machinery in this case was set into motion by complainant Anil Nagpal, who in his statement made to the police on 10.5.2017 stated that he has got a House No.35 at Mandir Wali Street, Beas where he and his family put up at the time of their visit to Dera Beas for religious purpose and they

have kept articles of daily use in that house; that on 8.5.2007 at about 8:00 a.m., his nephew Sanjeev Nagpal @ Raju informed him telephonically that Jagir Kaur wife of Amarjit Singh, Amarjit Singh son of Puran Singh along with other persons had broken up the lock of his house and committed theft of articles therefrom. According to the complainant then he along with his father Nand Lal Nagpal reached Beas and made statement to the police.

After registration of the FIR, the matter was investigated. The accused were arrested in this case. After completion of investigation and other formalities, challan against accused was prepared and filed in the Court.

On presentation of challan in the Court of Sub Divisional Judicial Magistrate, Baba Bakala, copies of documents relied upon in the challan were supplied to the accused free of cost as provided under Section 207 Cr.P.C.

Learned Sub Divisional Judicial Magistrate, Baba Bakala finding that charge for offences under Sections 457 and 380 IPC was disclosed against all the accused, charge-sheeted the accused for the said offences, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution had examined as many as seven witnesses, namely, PW1 complainant Anil Nagpal, PW2 Sanjiv Kumar, PW3 Rajiv Kumar, PW4 Darshan Singh, PW5 Kulwant Singh, PW6 ASI Amrik Singh and PW7 Inspector Swaran Singh (Retd.).

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C. in which the accused while denying the incriminating circumstances appearing against them submitted that they were innocent and had been falsely involved in the case. The accused further took the plea that no offence was committed by them; that police got registered a false case against them.

Further accused Jagjit Singh took up the plea that his father is owner of the property; that his mother Jagir Kaur(accused) gave an application dated 8.5.2007 to the SHO, Beas to the effect that Anil Nagpal forcibly wanted to take possession of their house, but Anil Nagpal and Rajiv Kumar have taken the forcible possession of their house and thrown the articles outside the house; that his father Amarjit Singh filed a criminal complaint which is pending in this Court and all the accused were summoned in that complaint; that a civil suit has also been decided in favour of his father Amarjit Singh holding them owner of the property. Accused Jagir Kaur and Amarjit also adopted the same plea as taken by accused Jagjit Singh in their statements under Section 313 Cr.P.C.

In defence evidence, accused examined Ajit Singh son of Kartar Singh as DW1.

After hearing arguments, the learned trial Court had acquitted the accused of the charge framed against them. The trial Court had formulated the following points for determination:

1. Whether accused persons committed house trespass in the house of Anil Nagpal in the area of Beas, having made preparation, to commit the theft in the night of

7.5.2007/8.5.2007?

2. Whether all the accused committed the theft of articles including double bed, center table, dressing table, guilts etc., from the house of Anil Nagpal on 8.5.2007, as alleged?

The reasoning given by the trial Court for coming to this conclusion was as under:

*“In the instant case, prosecution has miserably failed to show that house in question was owned or possessed by complainant Anil Nagpal, at the time of alleged occurrence. During the course of arguments, ld. APP for the State has mainly relied upon the alleged disclosure statements suffered by accused persons, which are Ex.PG and Ex.PH, on record. It is well settled that any confessional statement suffered before the Police Officer, is inadmissible in evidence and any disclosure statement, which results in recovery of any incriminating article, can be used as corroborative piece of evidence. But in the present case, prosecution has miserably failed to fulfill the essential ingredients required in order to attract both the offences u/S 457 and 380 of Indian Penal Code. Further, there is not an iota of evidence on record to show the exact time of the alleged offence, committed by the accused persons. Non-examination of alleged eye-witnesses of the occurrence, has also proved fatal to the case of the*

*prosecution. It is a cardinal principle of criminal jurisprudence that material available on record should be such, which should not admit of any other hypothesis except for guilt of the accused persons. But the present case is destitute of such material. Therefore, prosecution has failed to prove the charges against the accused persons beyond shadow of reasonable doubt. Accordingly, in view of above discussion, the accused present in the Court, are ordered to be acquitted of the charges framed against them.*

The complainant had preferred an appeal against the said judgment passed by trial Magistrate, which was assigned to learned Additional Sessions Judge, Amritsar, who after evaluation of the evidence available on the record did not find any fault with the judgment passed by SDJM, Baba Bakala. Learned Additional Sessions Judge, Amritsar had noticed that PW1 Anil Nagpal – complainant does not have any personal knowledge regarding the incident since according to him, he had been informed regarding theft by his nephew Sanjeev Nagpal telephonically. Regarding Sanjeev Kumar, who appeared as PW2, he had admitted in his cross-examination that no theft had taken place in his presence. In that way, he is also not an eye-witness of the incident. Therefore, the prosecution had not examined any witness, who might have seen the accused committing lurking trespass in residential house of complainant and committing theft therefrom. Discussing the disclosure statement alleged to have been made by accused Jagir Kaur and getting recovered

household articles in pursuance thereof, learned Additional Sessions Judge, Amritsar has observed that those articles were not identified by the complainant Anil Nagpal at any point of time and no identification memo was prepared in that regard. Furthermore, the articles were of such type which are easily available in every household, then it cannot be said that those belonged to the complainant, which had been stolen. As regards PW2 Sanjeev Kumar saying that recovery had been effected in his presence, learned Additional Sessions Judge, Amritsar observed that his signatures are not there on the recovery memo and if he had been there, his signatures would have appeared on such memo. Learned Additional Sessions Judge, Amritsar has further observed that a civil dispute regarding the property is pending between the parties, which has been given a colour of a criminal offence. Vide judgment dated 21.1.2016 learned Additional Sessions Judge, Amritsar affirmed the judgment passed by trial Court and dismissed the appeal, which left the complainant aggrieved and he has approached this Court by way of filing the present revision petition.

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

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 and not otherwise.

In view of the above, I find no illegality or infirmity in the judgments passed by the Courts below, the same are upheld and the

revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

23.5.2018

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**(H.S.MADAAN)**

**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**