

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

CRR-2959-2017

Date of decision:-28.5.2018

Surinder Kumar

...Petitioner

Versus

Bhola Singh and others

...Respondents

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

Present: Mr.P.K.S. Phoolka, Advocate
for the petitioner.

H.S. MADAAN, J.

This revision petition is directed against judgment dated 12.4.2017 passed by learned Additional Sessions Judge, Bathinda vide which he had accepted the appeal against judgment of conviction and order of sentence passed by Judicial Magistrate Ist Class, Talwandi Sabo and had acquitted the appellants/accused of the charge framed against them.

Briefly stated, facts of the case are that complainant Surinder Kumar had filed a complaint against accused Bhola Singh, Sukha Singh and Suba Singh, all residents of village Jodhur Pakhar, Tehsil Talwani Sabo, District Bathinda for the offences under Sections 447, 452, 427,

440, 504, 506 IPC on the allegations that the complainant is a handicapped person residing with his family at village Jodhur Pakhar; that he has a shop at bus stand of said village, which is comprised in Khasra No.733(0-4) 734(0-4) and he had constructed a *tharra*/platform in front of his shop; that on 31.3.2013 the complainant along with his wife and Gagandeep Singh son of Kulwant Singh was present in his shop; that at about 10:00 a.m. all the three accused along with three unknown persons entered his shop and started hurling abuses at complainant and his wife, thereafter, they started demolishing the *tharra* constructed in front of shop of complainant; that wife of complainant pleaded with the accused persons not to do so, then accused Bhola Singh tried to give a hammer blow at head of wife of complainant but she saved herself by running towards the road; that the complainant and his wife Santosh Kumari raised alarm at which, the accused ran away along with their respective implements giving threats that complainant and his wife would be killed within a day or so. According to the complainant as per allegations in the complaint, the complainant and his wife had gone to Police Station Maur and submitted a written complaint there seeking taking of action against the accused but to no effect, as such, the complainant filed a private complaint in the Court of Judicial Magistrate Ist Class, Talwandi Sabo on 15.10.2013.

After recording preliminary evidence, accused were summoned to face trial for the offences under Sections 447 and 427 IPC vide order dated 7.3.2014. Accused put in appearance and were admitted to bail. Notice of accusation was served upon the accused under Sections

447 and 427 IPC, to which, they pleaded not guilty and claimed trial.

Thereafter, the complainant examined himself as CW1 besides examining his wife Santosh Rani as CW2 and Iqbal Singh as CW3.

With that the evidence of complainant 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.

In defence evidence, accused examined Gurwinder Singh as DW1, Dasaunda Singh as DW2 and Nirmal Singh as DW3.

After hearing arguments, the learned trial Court had convicted the accused for the offences under Sections 447 and 427 IPC sentencing them as under:

Name of accused	Under Section	Sentence Awarded
Bhola Singh, Sukha Singh and Suba Singh	427 IPC	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo simple imprisonment for a period of one month each.
-do-	447 IPC	Rigorous imprisonment for a period of three months and to pay a fine of Rs.500/- each and in default thereof, to further undergo simple imprisonment for a period of 15 days each.

Both the sentences were ordered to run concurrently.

Feeling aggrieved, the accused had filed an appeal to the

Court of Sessions, which was accepted by learned Additional Sessions Judge, Bathinda and acquitted all the accused, which left the complainant aggrieved and he has filed the present revision petition.

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

Learned Additional Sessions Judge, Bathinda while accepting the appeal has taken into consideration the following facts:

(i) The delay in filing of the complaint.

The incident as per case of the complainant had taken place on 31.3.2013, whereas the complaint was filed in the Court on 15.10.2013 after a lapse of more than 6 ½ months. According to learned Additional Sessions Judge, Bathinda such delay has not been explained satisfactorily, which puts a big question mark over the credibility of the case of prosecution. Learned Additional Sessions Judge, Bathinda has referred to law on the subject while making such observations.

(ii) Absence of independent corroboration to the testimony of complainant and his wife inasmuch as no person from the village has supported or corroborated the version so put forward by the complainant.

Learned Additional Sessions Judge, Bathinda has taken into consideration the deposition of DW1 Gurwinder Singh, Sarpanch, who after seeing the writing Ex.DW1/A signed by him as village Sarpanch as well as by other members of Panchayat had stated that Bhola Singh is doing Government job and Bhola Singh, Sukha Singh and Suba Singh had not demolished the *tharra* belonging to complainant and no such

occurrence had taken place. He further stated that the complainant had filed a false complaint against the accused. DW2 Dasaundha Singh and DW3 Nirmal Singh had also deposed on those lines casting a doubt in the mind about truthfulness of the prosecution story.

(iii) Failure of the complainant to prove his ownership qua the property in dispute.

Learned Additional Sessions Judge, Bathinda has observed that though CW3 Iqbal Singh, Halka Patwari had placed on record jamabandi Ex.CW3/A but in jamabandi, there is no recital that complainant Surinder Kumar is exclusive owner of the property in dispute, rather as admitted by CW3 Iqbal Singh, there are other co-sharers along with the complainant, who are in joint possession of the property, as such the complainant could not be taken to be in possession of the property where *tharra* had been constructed.

Learned Additional Sessions Judge, Bathinda has observed that the complainant had failed to prove his case against the accused beyond shadow of reasonable doubt, as such accepting the appeal, the complaint had been dismissed.

After hearing the rival contentions, I find that 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 view of the above, I find no illegality or infirmity in the

judgment passed by learned Additional Sessions Judge, Bathinda, the same is upheld and the revision is found to be without any merit and is dismissed accordingly.

Necessary information be sent to the quarter concerned.

28.5.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No