

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

CRR-4252-2017

Date of decision:-12.2.2018

Raj Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present : Mr.Anil Kumar, Advocate
for the petitioner.

H.S. MADAAN, J.

Accused Inderjit @ Binu, Naresh, Jai Parkash, Hari Om and Kukki @ Surrender faced trial by Judicial Magistrate Ist Class, Rewari, who vide his judgment dated 30.1.2016 acquitted the accused of the charge framed against them. The appeal preferred against that judgment was dismissed by learned Additional Sessions Judge, Rewari vide judgment dated 12.10.2017. As such, complainant Raj Kumar has brought the present criminal revision petition.

Briefly stated facts of the case as per prosecution story are that on 7.8.2008 while a police party from Police Station Sadar, Rewari headed by ASI Surajbhan was on patrol duty, present at Pataudi Road,

then complainant Raj Kumar son of Revati Nandan submitted a written complaint contending therein that he is a Managing Director of Vishavkarma Shiksha Samiti, which is the governing body of Vishavkarma Senior Secondary School, Rewari; that the said society had purchased nearly 10 kanals of land in the year 1999 from Smt.Ram Ratti daughter of Umrao Singh and Sheela wife of Mahender Singh; that the land had a boundary wall up to the plinth level and a water hand-pump was also installed therein; that the society had got collected bricks and construction material for raising boundary wall, however, on 6.8.2008, four boys came there and threatened the tractor driver Subhash asking him not to supply bricks to the society; that on being informed, complainant Raj Kumar and other members of managing committee reached at the spot and observed that a tractor of red colour having trolley without number plate came towards them; that 25-30 young boys armed with lathis and iron rods were there on the tractor trolley; that the trolley was loaded with barbed iron wires and bamboo sticks; that the assailants were identified as Naresh son of Prithvi Singh, Hari Om son of Sh.Satya Narain, Jai Parkash son of Lal Singh, Rajesh son of Parkash, Mintu, Sintu, Ravi and Kukki; that the assailants raised alarm and ran towards the complainant and other persons accompanying him and they threatened them that in case they came to that land again, they would be killed; when the complainant stated that the land is owned by Vishavkarma Education Society and the assailants had no right over it and that he would report the matter to the police; then the assailants/trespassers went away with the tractor after placing barbed wires and bamboo sticks on the disputed land; that in the incident, the

complainant and Ramesh Dayal had suffered injuries. On the basis of this complaint, formal FIR was recorded. The case was investigated. The accused were arrested.

After completion of the 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 in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Magistrate finding that charge for offences under Sections 147, 148, 447, 506 and 323 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 twelve witnesses, namely, PW1 Raj Kumar, PW2 Ram Rati, PW3 Rampal, PW4 Naresh Kumar, PW5 Dharambir, PW6 ASI Krishan Kumar, PW7 Dr.Lal Singh, PW9 Sheela, PW10 Rameshwar Dayal, PW11 Ramesh Chand and PW12 Constable Ombir.

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 the accused examined Manoj Kumar, Civil Ahlmad as DW1, Ashok Kumar as DW2 and Rakesh Kumar,

Patwari as DW3.

After hearing arguments, learned Judicial Magistrate Ist Class, Rewari vide judgment dated 30.1.2016 acquitted the accused of the charge framed against them. The appeal preferred against the judgment dated 30.1.2016 was also dismissed by learned Additional Sessions Judge, Rewari vide judgment dated 12.10.2017, which left the petitioner – complainant aggrieved and he has filed the present revision petition.

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

The main reason for the acquittal given by the trial Court in its judgment is that though from the evidence brought on file by the prosecution, ownership of complainant over share of the property comes out to be there but its exclusive physical possession is not established. Rather from the record, it comes out that accused Naresh and Hari Om had purchased the share in the property in dispute from Dinesh Kumar, a legal heir of deceased Musaddi Lal having half share in the property in question; that the possession of the property was delivered to the accused persons vide sale deed No.9054 dated 8.2.2007 and that further from the documents, it comes out that vendors of Vishvakarma Shiksha Samiti were simply mortgagee without possession and therefore it cannot be said that vendors were having de facto possession at the time of execution of the sale deed and they transferred the same to Vishvakarma Shiksha Samiti. Report of Halqa Patwari Ex.DW1/6 has also been referred to in that regard. The trial Magistrate has also observed that no direct evidence of incident dated 6.8.2008 was

available on the record since the tractor driver whom the accused had allegedly threatened was not examined. As such, the actual physical possession of the complainant to exclusion of all other persons is not established, therefore, offence of criminal trespass is not proved.

The contention put forward by the prosecution/complainant that the land in question was being used as a play-ground for the school was found to be improbable keeping in view the distance of the land from the school premises. Discussing the evidence on file, the trial Magistrate has come to the conclusion that essential ingredients of offence under Sections 147 and 148 IPC are also not established and that the prosecution has failed to show that assembly of accused persons was unlawful by any means or that its common object was to trespass in the property of the complainant. Furthermore, no recovery of lathies or iron rods said to have been used in the incident by the accused had been effected. Necessary ingredients of Section 506 IPC were also not proved. The trial Magistrate has further observed that the witnesses have failed to depose that how they had sustained injuries and rather the assertions had been general in nature.

The lower Appellate Court has also discussed all the aspects of the case while upholding the judgment of acquittal passed by the trial Court.

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.

There is no illegality or infirmity in the judgments passed by the Courts below. Such judgments cannot be termed as perverse.

Finding no merit in the criminal revision petition, the same stands dismissed.

Necessary intimation be sent to the quarter concerned.

12.2.2018

Brij

**(H.S.MADAAN)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No