

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.A-1318-MA of 2017

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Date of decision:28.03.2019

Gursewak Singh

...Applicant

v.

State of Punjab and others

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Deepak Aggarwal, Advocate for the applicant.

Mr. Dhruv Dayal, Senior Deputy Advocate General, Punjab
for the respondent No.1-State.

Mr. K.S. Brar, Advocate for respondents No.2 to 4.

Mr. S.S. Sidhu, Advocate for respondents No.5 to 7.

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Inderjit Singh, J.

The complainant/applicant has filed this criminal miscellaneous application under Section 378(4) Cr.P.C. against State of Punjab and others-respondents seeking grant of leave to file appeal against the impugned judgment of acquittal dated 17.2.2017 passed by learned Additional Sessions Judge, Bathinda, whereby the appeal filed against the judgment of conviction and order of sentence dated 1.4.2016 passed by learned Sub Divisional Judicial Magistrate, Talwandi Sabo, has been accepted and the accused have been acquitted of the charges as framed against them.

It has been mainly stated in the application that the

accompanying appeal is being filed against the judgment dated 17.2.2017 passed by learned Additional Sessions Judge, Bathinda, which is likely to succeed on the grounds mentioned therein. It has been stated that the applicant has *prima facie* a good case in his favour. It has, therefore, been prayed that this application seeking leave to file appeal be allowed and leave be granted to the applicant to file appeal.

The challan was presented in FIR No.122 dated 11.12.2013 registered for the offences under Sections 447, 506, 431, 427, 148 and 149 IPC at Police Station Kot Fatta. The brief facts of the case as noted down by the learned Sub Divisional Judicial Magistrate, Talwandi Sabo, in her judgment dated 1.4.2016 are as under:-

“The present case has been registered against the accused on the basis of the statement got recorded by Gursewak Singh, complainant that he, alongwith his brother and his mother, are owner of 62 kanals of land, which included the land comprising in khasra No.47//9/2 measuring 2 kanal 4 marlas, which abuts main road and they have left one pahi from the road for reaching to their land and they have sown “Barsin” in the land, which was grown to the extent of one 'gith' (equal to 9 inch). He alleged that on 10.12.2013 at about 10 PM, he had gone to his land for taking a round and he found, all the accused persons were present on the spot, alongwith tractor and cultivators and were ploughing their land with the help of cultivators and have damaged their 'Barsin' crop, which was sown there. He alleged that the tractor was being driven by

accused Gora Singh and accused Gurmit Singh and Khira Singh were sitting on the mudguard of the tractor. Accused Sukhdev Singh and Gaggu Singh were standing on the road with gandasa. He tried to stop them, but all the accused threatened him with respect to his life and further threatened that they will teach the complainant a lesson for dividing the land. He further alleged that since he was alone, therefore due to fear, he came back and the accused persons have ploughed their land measuring 2 kanal 4 marlas, in order to get forcible possession and have caused loss to him by ploughing his crop, which was sown there. He also alleged that the accused persons were talking to each other that they will go to the land of Balwant Singh and will demolish the khal and thereafter on the next day, he went to Sarpanch Bhola Singh alongwith Balwant Singh and narrated him entire story and thereafter, they went to the Police Station and got recorded his statement. On these allegations FIR was registered. Statements of the witnesses were recorded. Accused were arrested. After completion of investigation, challan was presented against the accused.”

On presentation of challan, the trial Court finding *prima facie* case against the accused, framed charges for the offences under Sections 148, 447, 427, 506, 431 read with Section 149 IPC, to which the accused pleaded not guilty and claimed trial.

In support of his case, the complainant examined PW-1

Gursewak Singh, PW-2 Balwant Singh, PW-3 Anup Singh, Patwari Halqa,

PW-4 ASI Darshan Singh, I.O. and PW-5 Rakesh Kumar Ahlmad to SDM, Bathinda.

At the close of evidence of the complainant, the accused were examined under Section 313 Cr.P.C. and confronted with the incriminating evidence against them, but they denied the correctness of the same and pleaded themselves as innocent. They also stated that the land comprising in Khasra No.47//9/2 is owned and possessed by the accused since long. Therefore, no question arises regarding damage to the crop. They further alleged that the complainant and his family members have no right or interest in the land and apart from this, they alleged that none of the accused had ever damaged the water channel belonging to Balwant Singh and pleaded that they have been falsely implicated in connivance with Balwant Singh by the complainant, due to party faction in the village and accused closed the defence evidence without leading any defence evidence.

The learned Sub Divisional Judicial Magistrate, Talwandi Sabo, after appreciating the evidence vide judgment dated 1.4.2016 convicted and sentenced the accused for the offences under Sections 427, 148, 506 read with Section 149 IPC and acquitted for the offences under Sections 447 and 431 IPC. Aggrieved against this judgment, the accused filed appeal before the learned Sessions Judge, Bathinda, and the learned Additional Sessions Judge, Bathinda, vide the impugned judgment dated 17.2.2017, acquitted the accused after appreciating the evidence. Aggrieved from the impugned judgment, the appeal along with application seeking leave to file appeal has been filed.

Notice of motion was issued in this case.

Mr. Dhruv Dayal, learned Senior Deputy Advocate General, Punjab has appeared on behalf of respondent No.1-State; Mr. K.S. Brar, learned Advocate has appeared for respondents No.2 to 4 and Mr. S.S. Sidhu, learned Advocate has appeared for respondents No.5 to 7 and contested this application.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

A perusal of the findings given by the learned trial Court shows that the learned trial Court in her judgment found that as per mutation, the property over which, the alleged occurrence has taken place, belongs to both the complainant as well as accused to the extent of their share as recorded therein. In Ex.PW.3/B, which is “Kabja Karbai” there is reference of delivery of possession with respect to Khasra No.47//9/2 in favour of the persons, who are recorded in cultivating possession in the mutation. The learned trial Court also found that as per Ex.PW.3/A, there is mutation of land, over which alleged occurrence took place, which is in the name of Surjit Kaur (mother of the complainant), Jaspal Singh (brother of the complainant) and Gursewak Singh (complainant), Sukhdev Singh (accused) and Gurmit Singh (accused). The defence of the accused is that they had purchased the property comprising in Khasra No.47//9/2 from the mother of the accused, namely, Surjit Kaur, on the basis of which, they have become owners and in exclusive possession of the property and the accused are left with no right in the property. It has been held by the trial Court that the complainant as well as accused to be in possession of Khasra No.47//9/2 and the complainant has not led any evidence to prove their exclusive

possession on the spot. Being so, none of the parties, either the complainant or accused can allege their exclusive possession over the spot. So no one can allege trespass by the other. If the findings given by the learned trial Court are taken as correct and the accused have been acquitted for the offences under Section 447 and 431 IPC, then the question of causing damage to the crop also does not arise. As the complainant failed to prove the exclusive possession, therefore, it cannot be held that the crop was sown by the complainant party. If that is so, then the base of the case goes and a reasonable doubt exists in the prosecution version. The learned trial Court has taken into consideration all these facts and acquitted Sukhdev Singh one of the accused.

The learned appellate Court observed that PW-4 ASI Darshan Singh, Investigating Officer has admitted that Khasra No.9/2 (8-0) of 47 Mustil is in possession of Sukhdev Singh and Gurmeet Singh, who are cultivating the said land. In the revenue record also the accused have been shown in exclusive possession over the suit land. Furthermore, in the Jamabandi Ex.D.1 for the year 2012-13, Sukhdev Singh and Gurmeet Singh have been shown to be in exclusive possession over the disputed property being purchasers of Surjit Kaur, Gursewak Singh and Jaspal Singh.

Keeping in view the above findings of the learned appellate Court, a reasonable doubt exists in the present case and the prosecution has failed to prove the guilt beyond a reasonable doubt and the accused have been rightly acquitted by giving them the benefit of doubt.

A perusal of the judgment shows that the findings given by the learned Additional Sessions Judge, Bathinda, are correct as per evidence

and law and, in no way, these findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread by the Court below and which material evidence has not been considered by the Court below. The findings have been given by the appellate Court after appreciating the evidence in right and proper perspective and do not require any interference from this Court.

Keeping in view the above discussion, I do not find any ground to grant leave to file appeal. Therefore, finding no merit in the criminal miscellaneous application filed under Section 378 (4) Cr.P.C. seeking leave to file appeal, the same is dismissed.

March 28, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No