

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-837-MA-2016 (O/M)

Date of decision : 18.1.2019

Jai Singh

..... Applicant (s)

Versus

Jasmer Singh and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Som Nath Saini, Advocate,
for applicant.

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KULDIP SINGH, J.

This order will dispose of application filed by applicant under Section 378 (4) Cr.P.C. for grant of leave to appeal against judgment of acquittal dated 26.2.2016, passed by Judicial Magistrate 1st Class, Naraingarh, vide which complaint titled as **Jai Singh Versus Jasmer Singh and others**, filed under Sections 427, 447 IPC read with Section 34 IPC, Police Station Naraingarh, was dismissed.

Short facts, which are required to be noticed for the purpose of disposal of present application, are that land of applicant-complainant and land of accused adjoin each other, situated in the revenue estate Kurali. Complainant claims that he had planted some eucalyptus trees alongwith common boundary about six years back and cut these trees after keeping the root intact in April, 2011. Thereafter, coppice reached to the height of 2-3

feet in the month of June, 2011. On 22.6.2011, when complainant went to his fields, he found that coppice of 165 trees had dried up and completely damaged. He narrated loss to his brother Mehar Singh, who told him that on 18.6.2011, at about 6:00 PM, when he had gone to petrol pump to purchase diesel for tractor, he had seen accused spraying something with spray pump in the land of complainant. One Dharam Pal also witnessed the occurrence. Complainant reported the matter to police on 24.6.2011, which recorded DDR No. 9, dated 24.6.2011, but did not take any action in the matter. Complainant also got damage report from Range Forest Officer on 27.6.2011, who reported that loss of coppice is caused by spray of some poisonous pesticide. Complainant suffered a loss to the tune of Rs. 1,50,000/-.

The trial Court, after recording pre charge evidence, closed the evidence of complainant by order. Thereafter, charges under Sections 447, 427 IPC read Section 34 IPC were framed.

After charge evidence, complainant did not lead any evidence. Accused also did not further cross examined the witness.

In the statement recorded under Section 313 Cr.P.C., accused denied all allegations.

I have heard learned counsel for applicant and have also carefully through judgment of trial Court and lower Court record as well.

In this case, Mehar Singh, brother of complainant, was present, who saw accused allegedly spraying something with spray pump on said plants on 18.6.2011 at about 6:00 PM. However, surprisingly, he did not inform his brother about said loss for next four days. He told complainant about said fact only when he was informed about loss by his brother. Mehar Singh was not examined in this case.

Complainant claims that one Dharam Pal also witnessed the occurrence. The trial Court has disbelieved testimony of Dharam Pal on the ground that he claims that he saw accused sprinkling dangerous pesticide on plants from distance of one acre (wrongly stated to be one kilometer in judgment of trial Court). Even from the distance of one acre, Dharam Pal will not be able to tell what was being sprayed on said plants. Moreover, if Dharam Pal had seen that pesticide has been sprayed on the eucalyptus trees by accused, belonging to complainant, there is no reason why he did not inform complainant about same.

Crucial in this case is testimony of Nanak Singh (DW2), retired Kanungo, who visited the spot and prepared the report that complainant created a lot of obstacles when accused was getting demarcation report prepared. He reported that eucalyptus trees, standing on the spot, were planted in the fields, belonging to accused, situated in khasra No. 23//8, 9, which as per revenue record (Ex.D2), placed on file, is in the name of accused and not in the name of complainant.

The learned counsel for applicant has assailed the report of retired Kanungo, saying that he did not take patwari with him and no demarcation was conducted as per record.

I am of the view that it has come in evidence of Nanak Singh (DW2), retired Kanungo that complainant created a lot of obstacles when he was conducting demarcation, which shows that complainant was present at the spot. He did not file any objection to the report of retired Kanungo. It being so, after appreciating the evidence on file, trial Court has taken one of two possible views. This Court cannot replace its view with the view taken by trial Court. There is no ground to interfere in the judgment of acquittal dated 26.2.2016, passed by learned Judicial Magistrate 1st Class,

Naraingarh. Hence, application for leave to appeal against judgment of acquittal is dismissed.

(KULDIP SINGH)
JUDGE

18.1.2019
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No