

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No.80 of 2020**

Rakesh Gupta S/o Shri Hari Prasad Gupta Aged About 36 Years R/o Choubey Colony, G.E. Road, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
---- Petitioner/Complainant

Versus

1. Harcharan Singh Sahni Aged About 61 Years R/o Opp. Shyam Nagar Gurudwara, Raipur Chhattisgarh.
2. Indarpal Singh Sahni S/o Shri Raghuwari Singh Sahni Aged About 58 Years Director - Apolo Petrol Pump, Opp. Agriculture College, Raipur, District Raipur Chhattisgarh. R/o Opp. Shyam Nagar Gurudwara, Raipur Chhattisgarh.
-----Respondents/Accused persons

For Petitioner: Shri Vivek Kumar Tripathi, Advocate.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari J
Order On Board

08.12.2021

1. This is an Appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973 against the judgment of acquittal dated 23.10.2019 passed by the Judicial Magistrate, First Class, Raipur, District Raipur in Criminal Case No.1627/2015, whereby the Respondents/accused were acquitted from the offence punishable under Sections 452/34, 294, 379/34 and 427/34 IPC.

2. Brief facts of the case are that one Om Prakash Sahu, supervises the work at Sunita Park, Labandhi, Telibandha, Raipur, the owner of which is the Complainant Rakesh Gupta/Appellant herein. On 06.03.2014, when Om Prakash was doing his daily work at Sunita Park at about 11.00 am, the Respondents/accused persons namely Harcharan Singh Sahni and Inderpal Singh Sahi came there in a truck bearing Registration No. CG 04 JC 4840 along with a JCB machine and forcefully entered inside Sunita

Park and when Om Prakash Sahu tried to restrain them, they have abused him and started damaging the construction made in the said area and forcefully have cut 8 to 10 plants and loaded the building material by committing theft of iron rods, bags of cement bags causing loss of Rs.1,66,00/-. When the Supervisor Om Prakash Sahu has immediately informed the complainant about the said incident, he reached the spot. The Respondents/accused persons have also abused the complainant in front of guard as well as other persons, therefore, complainant has lodged a report at PS Telibandha (Ex.P-1). When the police has not registered any offence, complaint was made to the SP Raipur (Ex.P-2) and when no offence has been registered, a complaint was filed and after recording the primary evidence, the Respondents/accused persons were charged under Sections 452/34, 294, 379/34 and 427/34 IPC but they have denied the charges.

3. After completion of trial, by way of the impugned judgment, the Respondents/accused persons were acquitted.

4. Learned Counsel for the Petitioner submits that trial Judge has wrongly appreciated the evidence of the complainant as well as the witnesses and in spite of the material available on record, acquitted the accused in an erroneous manner, which is not sustainable in the eye of law, therefore, the application for grant of leave to Appeal may be allowed.

5. Heard and perused the papers annexed with the Petition.

6. The complainant has examined only two witnesses i.e. the complainant himself Rakesh Gupta as witness No.1 and the Supervisor Om Prakash Sahu as witness No.2 and no other independent witnesses were examined in the case. The complainant and his witness have categorically admitted in their evidence that the accused persons are also having an

adjoining land to Sunita Park. A part of the land of Sunita Parak was sold to the daughter of accused Harcharan Singh Sahni. Rakesh Gupta, the complainant, in his statement, has failed to state the total area of Sunita Park and has also not produced any evidence relating to the map of the disputed land or any other demarcation report, therefore, from the evidence, it is evident that the complainant has failed to prove that the dispute arose on the land possessed by the complainant as the Respondents/accused persons are also having adjoining land and no map of demarcation report was produced. So it is not proved beyond any doubt that the dispute arose in the land possessed by the complainant.

7. Having considered the evidence produced by the complainant, the fact that he failed to prove the initial burden that the land was possessed by him, the findings arrived at by the trial Court cannot be said to be erroneous. The Trial Court has rightly held that the complainant failed to prove the burden against the Respondents/accused persons beyond any reasonable doubt.

8. As the complainant has failed to demonstrate that the trial Court has committed any error, therefore, this Court is of the view that the findings arrived at by the said Court are legal, proper and justified and do not call for any interference.

9. In view of above, the application for leave to Appeal is liable to be and is accordingly dismissed.

Sd/-

(Deepak Kumar Tiwari)
JUDGE