IN THE HIGH COURT OF PUNJAB & HARYANA

AT CHANDIGARH

CRR No.153 of 2020 (O&M)

Date of Decision - 29.08.2022

Darshan Singh

....Petitioner

Versus

State of Haryana and Anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ivneet Singh Pabla, Advocate for the petitioner

Sandeep Moudgil, J (Oral)

Petitioner/Complainant has preferred this criminal revision to challenge the judgment dated 01.10.2019 passed by Ld. Sessions Judge Kurukshetra, (herein referred as 'the appellate court') and the judgment dated 26.02.2018 passed by Chief Judicial Magistrate, Kurukshetra (herein referred as the trial court) whereby respondent no. 2 /accused has been acquitted of the offence/charge under Section 323,506 IPC, in FIR No. 983 dated 09.12.2013, registered at P.S. City Thanesar, District Kurukshetra.

Briefly, the facts of the case are that on 19.11.2013 complainant Darshan Singh presented a complaint against accused/Vikram Singh before the then learned Chief Judicial Magistrate, Kurukshetra, for issuance of direction under section 156(3) Cr.P.C. by alleging that he had filed petition under Section 13 of the Hindu Marriage Act, 1955, to seek divorce from his wife Saroj Bala on the ground

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of cruelty and petition was pending before the Court of Additional District Judge, Kurukshetra, and that accused/Vikram Singh who is the brother-in-law of the complainant, stated that on 06.11.2013 when the divorce petition was pending in the court of A.D.J Kurukshetra, and the complainant was sitting outside the court room. it was just then the accused came to him and threatened that after attending the case, when complainant would be going home the accused will kill him on his way. Accused even started abusing the complainant. The complainant asked him to stop, upon which he was given 3-4 slap blows by the accused. On seeing people the accused Vikram Singh ran away from the spot and while going accused threatened the complainant with life. It is further alleged that Saroj Bala wife of complainant was a quarrelsome lady, who was being instigated by her parents, sister & her husband, and the accused. On these averments, alleging the commission of offences punishable under sections 323 and 506 of the Indian Penal Code,1860, outside the C.J.M Court, Kurukshetra, Complaint was sent filed for being forwarded under Section 156 (3) Code of Criminal Procedure,1973, to SHO P.S City Thanesar with a direction to register a case and to investigate the matter against Accused/Vikram Singh.

Complainant further alleged in his complaint that earlier also on 05-09-2013 when divorce petition was referred to Mediation Centre, Kurukshetra then complainant’s wife & other family members created nuisance during the proceedings. After having quarreled with the complainant, his wife and her family members torn complainant's clothes, whereupon complainant having suffered injuries, reported the matter to Police Station Sector -7, Kurukshetra. But nothing was done, except that challan was presented by the police against wife of complainant and her family members under section 107 & 151 Cr.P.C., which necessitated complainant to file complaint under section 156 (3) Cr.P.C. present FIR was registered which was allowed and FIR No. 983 was lodged.

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Investigation was conducted. Accused Vikram Singh was arrested and after completion of the investigation, police presented final report under section 173 Cr.P.C. against the accused, whereupon charges under sections 323, 506 IPC were framed against the accused.

During trial, ASI Harbans Lal as PW-1 stated before trial Court that he had partly investigated the matter, prepared the site plan Ex. PW1/A and recorded the statement of witnesses. Karambir, the brother-in-law of complainant, appeared as PW-2 and stated that on 06.11.2013 he, alongwith complainant Darshan, had come to the Court Complex Kurukshetra as divorce petition of Darshan Singh was pending in the Court of Sh. M.M. Dhonchak, the then learned Additional District Judge, Kurukshetra. He and Darshan Singh were present outside the said Court room and just then accused came and asked Darshan Singh as to why he did not cohabit with his wife. There was dispute between Darshan Singh and his wife Saroj Bala for the last many years; Panchayats were held. He also admitted that accused was employed in the office of Co-operative Societies. He gave the time of occurrence as 11:00 AM. Darshan Singh appeared as PW-3 and stated that he got married with Saroj Bala in the year 2009 and matrimonial dispute arose between them after 2-4 months. Dowry case was registered against him. He stated that his marriage was got solemnized by one Gulab Singh resident of Shahabad. On 06.11.2013 his divorce petition was pending in the Court for awaiting written statement of his wife. The matter was compromised due to which he had withdrawn the petition but again the dispute continued. Sanjeev Kumar s/o Tara Chand (cousin brother of complainant, Darshan Singh) s/o Tara Chand was also present outside the court room at 11:00 A.M.; he admitted that he along with Darshan Singh had asked the accused to get the matter compromised between Darshan Singh & his wife; he also admitted that accused had told that it was not in his hand to do so; further stated that he was working as Assistant Professor in Govt. College; whereas

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accused was posted as Inspector in Co-operative Societies, Kurukshetra and the complainant gave the time of occurrence as 11.00 a.m. He stated that accused verbally abused him by saying that the complainant was a person with dark complexion but such version was missing in his application Ex.PW3/A. Complainant Darshan Singh PW-3 admitted that he had asked accused many times to help in resolving the matrimonial dispute. Then stated that his matrimonial life got disturbed due to interference of accused. SI Virender Singh appeared as PW-4 and stated that had registered formal FIR Ex. PW/4, only thereafter prosecution evidence was closed.

Accused was examined under Section 313 Cr.P.C. who produced Ex. D1, Attendance Register for the month of November 2013, Ex D2 Certificate of Assistant Registrar, Co-operative Societies, Kurukshetra, in order to prove it that he was on duty on 06.11.2013 w.e.f. 09:00 A.M. to 05:00 P.M. and also Ex. D3 Movement Register.

Trial court considered the evidence and gave findings that Prosecution has failed to prove that alleged occurrence had taken place outside the court room in the manner as projected by the complainant and that no independent witness was joined by the prosecution, which is extremely fatal and no document in court proceedings was produced to prove that the divorce petition was pending on the day when alleged occurrence took place, on 06/11/2013. Even CCTV footage was not produced/recovered. Accordingly the trial court acquitted the accused/ Vikram, vide its judgment dated 26/02/2018.

Present petitioner, being dissatisfied with the judgment of trial court, preferred an appeal before the court of Session which was dismissed by ld.Sessions Judge Kurukshetra, vide judgment dated 10/10/2019, by holding that the entire controversy revolves around the testimony of the complainant & his brother-in-law Karambir but their statements are not reliable. The version of the complainant does

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2022.12.23 13:49
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not inspire any confidence. Had the Respondent/ accused been given beatings to the petitioner-Complainant, he would have narrated so, he must have got himself medically examined by the medical officer or by some private doctor, but no medical record has been produced to show that he was ever given beatings by accused on fateful day. It is further observed by the Ld. Appellate court that it is cardinal principle of law that the presumption of innocence is available to respondent/accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Thus, taking into consideration, the totality of the circumstances explained above, it can be conclusively said that the learned trial Court rightly appreciated the material coming before it and the impugned judgment passed by the learned lower Court is very well reasoned and based on settled principles of law. In these circumstances, the order of acquittal recorded by the learned trial court is upheld and maintained. Consequently, the appeal was dismissed by the appellate court.

Thus, the present revision is filed before this court by petitioner Darshan Singh, against the impugned judgment dated 01-10-2019 passed by Sessions Judge, Kurukshetra and the judgment dated 26-02-2018 passed by CJM Kurukshetra.

The contention of the learned counsel for the petitioner is that the judgments of both the courts below are against facts and material on record, and also based on conjecture and surmises in as much as evidence led by the prosecution is concerned. The prosecution has proved its case beyond reasonable doubt which can be seen from the testimony of PW-2 Karambir, who has corroborated the prosecution case and the occurrence and presence of accused/respondent on the place of occurrence. Respondent No. 2 / accused has been acquitted of the charge under sections 323 and 506 IPC on the ground that the

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accused Vikram Singh working as Inspector in Co-operative Societies in Kurukshetra in D.C. Office Complex which is located at a distance of 200 meters from the place of occurrence, both the courts below wrongly acquitted the accused/ Vikram Singh, prosecution did not place on record CCTV footage so as to show that prove the occurrence. As per testimony of the complainant/petitioner also the occurrence stands proved. Therefore, the judgments of both the court below are cryptic and liable to be set aside.

After hearing learned counsel for the petitioner, this Court is of the view that present petition is liable to be dismissed because both the courts below have dealt with the present case from all the possible views in their judgments, viz, CCTV footage not collected during investigation; no independent witness was joined in the investigation. accused, being employee of office of Co-operative Societies, was present in his office from 08:00 AM onwards as such his presence on the place of occurrence is doubtful. Further, there is no argument raised by counsel for the petitioner that the office of accused is located at a distance of 200 meters only from the place of occurrence nor has this come out from the mouth of complainant in his testimony. There is no injury on the person of either of the party much less complainant, as such offence u/s 323 IPC is not made out. Further, when the presence of accused on the place of occurrence is not proved, no offence u/s 506 IPC is also made out. Thus, the courts below have rightly held that the genesis of place of occurrence is not proved.

Dismissed.

DATE: 29.08.2022 **(SANDEEP MOUDGIL)**
sham **JUDGE**
Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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