

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-4025-2012(O&M)

Date of Decision:-19.04.2022

Sukhwinder Singh.

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. H.S. Dhindsa, Advocate for the Petitioner.

Mr. Sidakmeet Singh Sandhu, AAG Punjab.

Mr. N.S. Dadwal, Advocate for the Respondent nos.2 to 4.

JASJIT SINGH BEDI, J. (ORAL)

The present revision has been preferred by the complainant against the judgment dated 04.01.2011 of the Learned JMJC, Jagraon whereby the accused-respondents no.2 to 4 (herein) were acquitted in case FIR No.360 dated 07.11.2005 under Sections 447, 511 and 34 of IPC P.S. Jagraon and the order in appeal where their acquittal was further upheld by the court of learned Additional Sessions, Ludhiana vide judgment dated 22.05.2012.

2. The case as per the prosecution emanates from the statement of Sukhwinder Singh son of Pritam Singh made before HC Labh Singh on

07.11.2005 to the effect that on 3.11.2005 at about 10 am, his uncle Raghvir Singh, along with his two sons viz. Jasvir Singh and Kuldeep Singh above named had illegally ploughed the land belonging to complainant and his brother Avtar Singh, abutting the road, situated at village Roomi with their red coloured Eicher tractor. The said land was in the ownership of the complainant and his brother Avtar Singh since the year 1991. Raghvir Singh and his sons Jasvir Singh and Kuldeep Singh due to greediness had taken illegal and forcible possession of their land. The complainant tried to arrive at a compromise with Raghvir Singh, but they did not pay any heed to the requests of the complainant. On the basis of said statement a ruqa was sent through Jagtar Singh to police station Jagraon for the registration of the case and the present case was registered. The investigating officer viz. HC Labh Singh conducted investigation, inspected the spot and prepared the site plan, recorded the statements of witnesses under Section 161 Cr.PC. The Investigation Officer also investigated the matter from Halqa Patwari and arrested accused Raghvir Singh, Jasvir Singh and Kuldeep Singh, above named on 14.11.2005 as per rules, who were later on released on bail. After completion of the necessary formalities, the instant challan has been presented in the Court.

3. On finding a prima facie case against the accused, charge under Sections 447, 511 read with Section 34 IPC was framed against them to which they pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

Oral Evidence

PW-1	:	Sukhwinder Singh, the complainant
PW-2	:	Jugraj Singh
PW-3	:	Balwinder Singh
PW-4	:	HC Karam Singh

PW-5 : Jaspal Singh, Patwari of V. Dhollan
PW-6 : ASI Labh Singh, the IO
PW-7 : HC Hardev Singh, the attesting witness of memos.
PW-8 : Resham Singh, Reader in the Court of SDM,
Jagraon.

Documentary Evidence

Ex.PA : Statement of Complainant
Ex.PC/1 : Ruqa
Ex.PD : Carbon Copy of FIR
Ex.PE : Rough Site Plan
Ex.PF : Recovery memo of tractor no.PIB 5688 of accused
Ex.PG : Memo of grounds of arrest.
Ex.PH : Personal Search memo of all the accused.
Ex.PI : Recovery memo of copies of RC of tractor and DL
of accused.
Ex.P1 : Copy of Jamabandi for the year 2002-03
Ex.P2 : Copy of jamabandi for the year 1987-88
Ex.P3 : Copy of Khasra Girdawri for 2004-05 of land of
complainant.
Ex.PW-8/A : True copy of RC of tractor No.PIB-5688 of
accused Kuldip Singh
Mark-A : Copy of Sale Deed dated 11.07.1991.

4. On closure of the evidence of the prosecution, the statement of the accused under Section 313 Cr.PC were recorded in which the entire prosecution evidence and incriminating material was put to the accused to which they claimed their false implication and pleaded their innocence. Though the accused preferred to lead defence evidence, however, they did not produce any evidence in defence.

5. The trial Court held that there was variation regarding the time of occurrence in the statement of the complainant as PW-1 with the time of occurrence mentioned in the FIR. The complainant has mentioned the time of occurrence at about 10.00 am, however, while appearing as PW-1 in his

examination in chief he mentioned the occurrence to be at 4.00/5.00 PM. This variation was held to be a major discrepancy in the prosecution version. The trial Court further held that Jita Singh who had allegedly seen the occurrence was not examined by the prosecution. PW-2 was examined by the prosecution but his being an eye witness did not find mention in the FIR and he also had not mentioned the time of occurrence, making his testimony suspect. PW-5 Jaspal Singh, Patwari deposed that the land in question was *mushtarka* (joint). Keeping in view the aforesaid discrepancies in the statements of the witnesses trial Court acquitted the accused vide judgment dated 04.01.2011.

An appeal was preferred by the complainant (petitioner herein). The lower Appellate Court found that the petitioners held 1/3rd share in the dispute land and except for the statement of PW-3 there was no documentary proof that the share of the accused persons was on lease with the complainant party. Therefore, it could not be presumed that the land in dispute was on lease with the complainant party during the period when the alleged occurrence had taken place. The lower Appellate Court, therefore, held that the petitioners could not be held guilty of criminal trespass or mischief regarding the property of which they were co-sharers as co-sharers had equal rights and co-ordinate interest in the property though their shares might not have been fixed or determined and every co-sharer had a right to enjoy possession equal to that of other co-sharers. The Court further held that the copies of *jamabandies* and *Khasra Girdawaries* also shows that all the co-sharers including the complainant and accused were recorded in joint possession of the disputed property. Thus the lower Appellate Court dismissed the appeal of the petitioners.

6. Against the said judgment, the present revision petition has been preferred by the accused.

7. The Counsel for the petitioner has submitted that the witnesses to the occurrence have wrongly been disbelieved and minor discrepancies in their statements would not shake the edifice of the prosecution case. He further argued that merely because the name of the witness did not figure in the FIR did not mean that the said witness had not seen the occurrence. It was also argued that the petitioner/complainant at the time of incident was in exclusive possession of the property on which accused had committed trespass thereby committed offences under Section 447/511 read with Section 34 IPC.

8. I have heard counsel for the petitioners at length.

9. Undoubtedly there is substantial variance in the original complaint of the complainant-Sukhwinder Singh as to the time of occurrence in the original complaint/FIR. The occurrence is of the morning whereas PW-1 the complainant has stated that the occurrence took place in the evening. Thus there being a difference of 6 to 7 hours discrepancy as to the time of occurrence. Further the revenue record would also show that both the parties are co-sharers and the settled proposition of law is that every co-sharer is deemed to be in possession of every single inch of the property and there cannot be a case of trespass against the co-sharer because individual shares are indeterminate.

This Court in **Gurmeet Singh Vs. Rachhpal Singh 2004(2)**

RCR (Criminal) 72 held as under:-

“ *A perusal of Annexure P-6 which is a copy of the Khasra Girdawari for the year 1998 shows “self cultivation of the co-sharers i.e. Manjit Singh, Jagdish Singh, Bank Kaur, Baljit*

*Kaur and Kuldip Kaur”. Therefore, Bant Kaur, Kuldip Kaur and Baljit Kaur have not been shown in possession of any specific khasra number. When the land is joint then every co-sharer has an interest in every inch of land as has been laid down by the Full Bench of this Court in **Bhartu Vs. Ram Sarup, 1981 P.L.J. 204** and in **Kochkunju Nair vs. Koshy Alexander and Others, 1999(3) Supreme Court Cases 482** the Appex Court has held as follows:*

“ That all co-owners have equal rights and coordinate interest in the property though their shares may be either fixed or indeterminate. Every co-owner has a right to enjoyment and possession equal to that of the other co-owners. Each co-owner has in theory interest in every infinitesimal portion of the subject matter and each has the right irrespective of the quantity of his interest to be in possession of every part and parcel of the property jointly with others”

Since the petitioners are co-sharers in the property in dispute they have committed no offence of theft and trespass. So to continue with the complaint is an abuse of the process of the Court.

Thus keeping in view the aforementioned facts and discrepancies in the statements of Pws and the position of law as enumerated above, this Court finds no merit in the present revision petition, which is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 19, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No