

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-764-2013

Date of decision : 31.10.2022

Gursharanjit Singh

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.S. Rang, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

Mr. Ramanjeet Singh, Advocate
for respondents No.2 and 3.

PANKAJ JAIN, J.

This is a revision filed at the behest of complainant. Ball was set into motion by the complainant alleging offence punishable under Sections 447, 435 and 34 of Indian Penal Code (for short 'IPC') against the respondents-accused. On his complaint FIR No.16 dated 13.02.2006 was registered at Police Station Koomkalan, Ludhiana.

2. As per the contents of the FIR, complainant alleged that:-

“xx xx xx

They are two brothers. His father has expired. Sevakmanjit Singh is his elder brother. Sister of his father namely Daljit Kaur died unmarried and there was land of 11 killa on her name which was registered. Daljit Kaur, above said had got decree from the court and had transferred 5.1/2 killa of land to himself and 5.1/2 killa of land to his brother Sevak Manjit Singh and also got the mutations entered in their names. In the year 2003 Daljit Kaur had filed a suit for setting aside the decree. Daljit Kaur expired in 2005. The 5.1/2 killa of land was on his name. Regarding this

land, he got registered a case against his brother Sevak Manjit Singh and Ors. U/s 447, 427, 506, 148 and 149 IPC. PS Koomkalan. He sowed paddy in his land of 5.1/2 killa which was destroyed and later on he came to know that his brother Sevakmanjit Singh had sprayed the wrong medicine in his fields and destroyed his crops. Regarding this he got lodged Rapat Roznamcha at PS Koomkalan. Yesterday, he went to see his crops of wheat and he saw that the colour of his crops was becoming yellow due to spray of chemical. He made a talk with Pardhuman Singh, who is son of his Bhua and they in the evening at 6.00 PM. went to see the wheat crops in the fields and saw that his brother Sevakmanjit Singh alongwith Megh Nath son of Chhota Ram, while entering in his fields were spraying the ashes mixed with chemical so that his field is destroyed. When he raised lalkara, then both fled away from the spot by leaving their bags.”

3. Trial Court convicted the accused for offence punishable under Sections 447 and 427 of IPC and sentenced them as under:-

“U/s 447 Indian Penal Code:

Simple imprisonment for 2 (two) months with fine of Rs.500/- to each convict and in default of payment of fine, each convict will undergo further S.I. for 10 (ten) days.

“U/s 427 Indian Penal Code:

Simple imprisonment for 6 (six) months with fine of Rs.1000/- to each convict and in default of payment of fine, each convict will undergo further S.I. for 1 (one) month.

4. The appeal preferred by the respondents-accused stands allowed and they have been ordered to be acquitted of the charges framed against them.

5. Vide order dated 31.05.2013, notice of motion was issued on the contention of the counsel for the petitioner that the matter can be resolved between the parties as they are related to each other. The parties appeared before the Mediation & Conciliation Centre, but the mediation failed.

6. Counsel for the petitioner emphatically argued that the learned Appellate Court failed to appreciate that admittedly the parties were in exclusive possession of the respective shares and even if the land is joint but the co-owners are in settled exclusive possession of the respective shares, offence under Section 447 of IPC can still be made out as the basic ingredients of criminal trespass as defined under Section 441 of IPC is possession and not the ownership. He submits that it is a case wherein eye witness account has come on record. He thus contends that the Appellate Court has erred in setting aside a well reasoned judgment passed by the trial Court on the basis of wrong appreciation of law. He refers to the statement made by DW-1 Zora Singh, who admitted that both the complainant and accused have their own agricultural property and they are doing well in their different fields.

7. I have heard counsel for the petitioner and have gone through the records of the case.

8. After considering the judgment passed by the trial Court, it was found that the trial Court has proceeded on the presumption that it is the accused who has to deny the occurrence. Whole of the judgment rendered by the trial Court is based on the finding that the accused has not been able to prove that no occurrence has taken place and since the witnesses examined by the accused in defence admitted that the complainant and the accused No.1 were in possession of different fields.

Thus, ingredients of Section 441 of IPC are proved.

9. Appellate Court while dealing with the issue in hand held that:-

“xx xx xx

Though, Ld. Counsel for the complainant and Ld. Addl. PP for the state contended that the appellants/accused have admitted that they are having separate chunk of land, out of joint land, due to which they be convicted under section 447 and 427 IPC, for trespassing into the land of complainant Gursharanjit Singh and causing damage to the crop sown therein. However, it is observed that the said contention of Learned counsel for the Addl. PP for the state as well as Ld. Counsel for the complainant is devoid of any merit, as from the oral as well as documentary evidence adduced on the file, the jointness of possession of complainant Gursharanjit Singh and Sevak Manjit Singh stands proved. Thus, the oral evidence adduced by the prosecution and accused contrary to the documentary evidence has no value in the eyes of law. Even if the version of prosecution and accused that the complainant Gursharanjit Singh and accused Sewak Manjit Singh are in possession over different portion of joint property, is admitted as correct, for the sake of argument, then, it is pointed out that the prosecution failed to adduce any reliable and trust worthy evidence to prove the possession of Gursharanjit Singh over separate chunk of land, out of the joint holding. The prosecution miserably failed to adduce any oral or documentary evidence to prove the separate possession of complainant Gursharanjit Singh (PW2) over specific portion out of joint land. When the prosecution has failed to prove the specific exclusive possession of PW2 Gursharanjit Singh over any specific portion of joint land, the very version of

prosecution becomes doubtful and shaky and cannot be accepted. It needs no reiteration that all the co-sharers /co-owners are deemed to be in possession, over every inch of joint holding. When PW2 Gurcharanjit Singh and accused Sevak Manjit Singh have been depicted as co-owners/co-sharers in the jamabandi and khasra girdawari, the very prosecution version cannot be accepted. Hence the order passed by the Learned Trial Court, vide which the appellants /accused were convicted cannot be sustained in the eyes of law, being perverse.”

10. In fact at the heart of the present dispute lies a land belonging to paternal aunt of the complainant and the accused namely Daljit Kaur who died issueless. As per the records of the case, there is a decree suffered by Daljit Kaur in respect of her land in favour of the complainant as well as accused No.1. The said decree was assailed by her pleading fraud. Accused No.1 filed admitted written statement in the suit filed by Daljit Kaur. However, the complainant is contesting the same. Complainant also filed civil suit against Daljit Kaur and accused No.1 seeking restrain against them. The said dispute further branched into various litigations including the present FIR. Daljit Kaur has now died and the brothers are at loggerheads. The admitted position is that the land is still held joint by them though they claimed to be in exclusive possession of their respective shares. Law is settled. Till the land is joint, all co-owners are in possession of each and every inch of the land. Reference can be made to Full Bench judgment of this Court rendered in the case of '*Bhartu vs. Ram Swarup*', reported as *1981 PLJ 204*', wherein the Full Bench of this Court approved the following propositions qua rights and liabilities of co-sharers as settled by Division Bench of this

Court in the case of *Sant Ram Nagina Ram vs. Daya Ram Nagina Ram*,
AIR 1961 Pb. 528:-

- 1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.
- (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
- (6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.
- (7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.”

11. The law laid down in *Bhartu's case* (supra) was again reiterated by another Full Bench judgment of this Court in *Ram Chander vs. Bhim Singh reported as 2008(3) RCR (Civil) 685'*. It is settled

proposition of law that if two views are possible, the one that favours the accused needs to be preferred.

12. The Revisional Court while exercising jurisdiction under Section 401 of Cr.P.C., is to interfere only where the view taken by the Court below is held to be highly improbable or impossible. Parameters w.r.t. revisional jurisdiction are well settled by Apex Court in ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907*** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not

be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh).”

13. As a sequel of the aforesaid discussion, there is no reason to interfere in the present case. Consequently, the present revision petition is ordered to be dismissed being without merit.

(PANKAJ JAIN)
JUDGE

31.10.2022
Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes