

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No. 61 of 2016

Date of decision : October 17, 2022

Braham Dutt

..... Petitioner

Versus

State of Haryana and others

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Gaurav Singla, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G. Haryana.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for respondent Nos. 2 and 3.

PANKAJ JAIN, J. (ORAL)

The complainant is in revision. The challenge is to the judgment passed by Additional Sessions Judge, Palwal whereby appeals filed by the convicts/respondents have been allowed and they have been acquitted of the offences punishable under Section 323, 342, 379 IPC. It needs to be noticed that respondent No.3 namely Vijender Kumar has died during the pendency of the present revision petition, thus proceedings qua him stand abated.

The complainant filed complaint under Section 200 Cr.P.C. against the respondents. They were summoned to face trial for the offences punishable under Section 323, 342, 379 read with Section 34 IPC.

After trial they were sentenced as under:-

<i>Under Section</i>	<i>Period</i>	<i>Nature</i>	<i>Fine</i>
323 IPC	Six months	R.I.	Rs.500/- each. In default of payment of fine, they shall undergo simple imprisonment of fifteen days.
342 IPC	Six months	R.I.	Rs.500/- each. In default of payment of fine, they shall undergo simple imprisonment of one month.
379 IPC	One year	R.I.	Rs.1000/- each. In default of payment of fine, he shall undergo simple imprisonment of one month.

In appeal they were acquitted. As per complaint filed by the petitioner it was alleged that on 21.2.2006 when complainant went to his clinic, he found the shutter open in half. His motor cycle along with the bag was also missing. The complaint was made to police station, Hassanpur at about 5.00/6.00 a.m. The police came on the spot when the complainant gave his written complaint. When the complainant visited the police station, accused Vijender Kumar abused him alleging that the complainant has tried to lodge a false case. It was claimed that the accused Vijender Kumar tore off the written complaint filed by the complainant. He further claims that as a sequel of the aforesaid incident the accused Vijender Kumar along with co-accused Ram Kumar came to his shop on 12.3.2006 and dragged him outside the shop and forcibly took him in the police jeep. There was an amount of Rs.4209/- in his pocket which was taken by them and he was given beatings. The trial court found that the accused were guilty of taking Rs.4209/- on the

pretext of jamatalashi. No jamatalashi could have been effected in a criminal trial and thus, held that taking away an amount of Rs.4209/- on the pretext of wrong jamatalashi amounted to offence punishable under Section 379 IPC. The trial court further found that there was no requirement for any medical evidence to prove offence punishable under Section 323 IPC and thus, from the oral testimonies of the complainant, Section 323 was proved against the accused-respondents. While holding the respondents guilty of offence punishable under Sections 323, 379 IPC the trial court also found them guilty of offence punishable under Section 342 IPC, though no reasoning has been accorded for doing so.

In appeal, the appellate court found that there was no prior sanction as contemplated under Section 197 (3) Cr.P.C. prior to lodging prosecution against the accused. The ingredients of Section 379 IPC were missing. In a regular enquiry held against Ram Kumar, he has been exonerated and consequently ordered acquittal of both the accused.

Learned counsel for the petitioner submits that the order passed by the appellate court was not sustainable as a well reasoned judgment passed by the trial court has been set aside. He further contends that the reasoning recorded by the appellate court with respect to acquittal for the charges punishable under Section 379 IPC is also not sustainable in the eyes of law. He further submits that forcefull dispossession is not the requirement of section 379 IPC. The ingredient is dispossessing without consent.

Per contra, learned counsel for the respondents submits that

no fault can be found in the judgment passed by the appellate court. The appellate court after considering the bare provisions of law has rightly concluded that the respondents deserve acquittal. The court was well within its right to re-appreciate the evidence. Whenever two views are possible, it is trite law that the view that favours the accused has to be upheld.

I have heard learned counsel for the parties and have gone through the evidence on record.

The gravamen of the complaint is with respect to atrocity at the hands of Vijender Kumar. No specific action has been attributed to Ram Kumar apart from stating that he was also accompanying the SHO Vijender Kumar. There is no allegation with respect to beatings at the hands of Ram Kumar, thus, he cannot be held guilty of offence punishable under Section 323 IPC. Similarly, recovery of Rs. 4209/- on the pretext of jamatalashi which is wrong as per trial court cannot be termed as theft as defined under Section 379 IPC. The trial court erred in proceeding on the premise that the complainant when searched was in his capacity as a complainant. As per the contents of complaint, it is clear that his earlier complaint was stated to be false and he was being investigated for having conspired to file false complaint. Thus, in such a situation it cannot be said that he was being searched in his capacity as a complainant.

Be that as it may, even if jamatalashi was wrong, seizure of Rs.4209/- pursuant to a memo cannot be termed as theft.

Another aspect that needs to be noticed herein is that

admittedly for similar charges accused Raj Kumar was facing departmental enquiry wherein he has been found innocent.

Trite it is that exoneration in the departmental proceedings will not ipso facto absolve him of the criminal proceedings but at the same time it is one of the considerations that needs to be accounted while taking holistic view of the matter in hand. More over, it is also a fact that has come on record that the exoneration was earned by the accused as the complainant failed to appear before the enquiry officer after having been called time and again. He failed to depose before the enquiry officer. Thus, the appellate court is right in holding that exoneration of ASI Ram Kumar owing to the conduct of the complainant also cannot be lost sight of.

In view of the aforesaid circumstances, no fault can be found with the findings recorded by the trial court which has resulted in the acquittal of the respondent-accused. The question with respect to the maintainability of single revision petition against the judgment whereby when the separate appeals filed by the co-accused were decided as is not being gone into. Moreover the principles with respect to revisinoal jurisdiction in the matters pertaining to acquittal have been well culled out by Apex Court in the case of ***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).”

Thus, taking into consideration the facts and circumstance of the case and in view of the ratio of law laid down by the Apex Court in **Bindeshwari Prasad Singh's case** (supra), no case for exercising revisional jurisdiction is made out.

Consequently, the present revision petition is dismissed.

**(PANKAJ JAIN)
JUDGE**

October 17, 2022
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Whether speaking/reasoned	Yes
Whether Reportable :	No