

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

CRR-3491-2018 (O&M)

Reserved on: 10th August, 2022

Pronounced on: 18th August, 2022

Sita Ram

... Applicant/Petitioner

Versus

Ram Kishan and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ankit Kumar, Advocate for
Mr. Munish Mittal, Advocate for the applicant/petitioner.
Mr. Gurmeet Singh, Assistant Advocate General, Haryana.

AVNEESH JHINGAN , J.

CRM-37269-2018

This is an application for condonation of delay of 25 days in filing the petition.

For the reasons mentioned in the application, the same is allowed and delay of 25 days is condoned.

CRR-3491-2018

1. Aggrieved of judgement of acquittal of respondents No.1 to 5, dated 1st May, 2013 in case of FIR No. 219, dated 6th June, 2008, under Sections 147, 148, 420, 448, 427, 506, 379 and 120-B of Indian Penal Code, 1860, registered at Police Station City Jagadhri, and dismissal of appeal vide order dated 15th February, 2018, this revision petition has been filed.

2. Brief facts are that the FIR was registered at the instance of Sita Ram. He stated that on 15th November, 2000 Ram Kishan (respondent no.1) and the petitioner entered into an agreement to sell for a plot measuring 640

The petitioner raised a construction on the plot by securing loan from the Bank. On 16th April, 2008, Ram Kishan executed a sale deed in favour of Sonu and Narinder. The allegations are that on 18th April, 2008 Ram Kishan, Om Parkash and Kashmiri using a JCB damaged the construction raised by the petitioner and stole the cooler, chair and table.

3. The Prosecution examined nine witnesses and the agreement to sell was produced as Mark 'A'. In defence the registered sale deed and the revenue record were exhibited.

4. The respondents were acquitted considering :-

- (i) it was not proved that the plot was owned and possessed by Sita Ram.
- (ii) The agreement to sell does not bestow title of ownership and further it was not a registered document.
- (iii) The execution of agreement to sell was not proved as the subscriber, stamp vender and the Advocate, who had drafted the agreement were not examined. Sushil Kumar the attesting witness to agreement to sell was declared hostile.
- (iv) No document or revenue record was produced showing that the petitioner was in possession of the plot. Further the petitioner in his cross-examination stated that he had not taken an electric connection for the plot.
- (v) The deposition of Arvind Kumar (PW-4) was found to be hearsay, as from the petitioner he came to know on the next day about the demolition of the construction by the respondents.
- (vi) The site plan produced did not show any demolition of the boundary wall.
- (vii) There was delay of one and half month in lodging the FIR.

(viii) The registration number of the JCB allegedly used for demolition was not mentioned.

(ix) The recovery of the stolen cooler from Kashmiri was not found worth reliance, as no details of the stolen cooler were given by the petitioner. The recovery memo was not prepared as per law. As no independent witness was associated, no evidence was produced to show that the house from which cooler was recovered belonged to Kashmiri.

4. The Appellate Court upheld the judgement of acquittal.

5. Learned counsel for the petitioner argued that the trial Court has not considered the evidence of two neighbours who deposed that there was an agreement to sell between the petitioner and Ram Kishan and petitioner was in possession of the plot in dispute. It is further argued that petitioner filed a suit for specific performance which was allowed. However, in appeal decree was modified and alternative relief was granted. The Court was informed that the matter is pending before this Court in Regular Second Appeal. The contention is that trial Court has not considered the confessional statement of Kashmiri recorded by the police with regard to the stolen cooler.

6. The prosecution failed to prove that the petitioner was owner and in possession of the plot in dispute. It is rightly held that agreement to sell is not a document of title. The deposition of the neighbours will not bestow a valid title of the ownership on petitioner. The filing of the suit for specific performance only shows that no registered sale deed was executed in favour of the petitioner. During the course of arguments it has not been pointed out that finding was recorded in proceedings for specific

performance that the petitioner was in possession of the land.

7. The reliance upon the confessional statement of Kashmiri recorded by the police is misplaced as accused could not only be convicted on the basis of confessional statement recorded by the police.

8 Supreme Court in **New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey, 2020(1) Ori. Law Rev. 246** held as under:-

“8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C., 1973 is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisionsal power is to set right a patent defect or an error of jurisdiction or law.”

9. No case is made out for interference in the impugned judgment and the Appellate Order.

10. The revision petition is dismissed.

**(AVNEESH JHINGAN)
JUDGE**

18th August, 2022

Parveen Sharma

Whether reasoned/speaking	Yes
Whether reportable	Yes