

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-850-2018 (O&M)

Date of Decision: 23.09.2022

Peer Hari Nath

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Raj Kapoor Malik, Advocate for the petitioner.

ASHOK KUMAR VERMA, J.

Through this revision, petitioner-Peer Hari Nath (complainant) has laid challenge to the judgment dated 28.07.2017 of the Ist Appellate Court, affirming the judgment of the trial Court dated 19.09.2016, thereby acquitting respondents No. 2 to 11 (hereinafter referred to as 'private respondents') in case FIR No. 176 dated 23.11.2012, registered under Section 379 IPC at Police Station Kalayat, District Kaithal.

Briefly, the private respondents were booked and tried in the aforesaid FIR, on the allegations that on 23.11.2012, the petitioner-complainant moved a complaint Ex. PW-4/A to the SHO, Police Station Kalayat, alleging therein that he had filed Civil Suit No. 100 of 2011, qua his land measuring 169 kanals 0 marla, situated in village Kamalpur, District Kaithal, against respondents No. 2 and 10, namely, Jamnanath

and Kanwarpal, respectively. In the said suit, the learned Civil Court, has passed the stay order restraining respondents No. 2 and 10 from interfering into peaceful possession of petitioner-complainant. However, on 19.11.2012, when the complainant-petitioner accompanied by police went to his fields for harvesting the millet crop sown in 16 acres of the land, he found that the same had already been cut. The private respondents have stolen his millet crop after harvesting the same, despite the stay order. On the statement of complainant, formal FIR was registered for the commission of offence punishable under Section 379 IPC. After holding trial, the private respondents were acquitted by the trial Court vide judgment dated 19.09.2016.

Being aggrieved, the complainant approached the Ist Appellate Court, but remained un-successful as his appeal too was dismissed vide judgment dated 28.07.2017, impugned herein.

Learned counsel for the petitioner *inter alia* contends that judgments of both the Courts below are based upon conjectures and surmises. Both the Courts below have erred in acquitting the private respondent by giving benefit of doubt considering the fact that the present FIR was registered as a counter blast to the civil litigation between the parties. The Courts below have wrongly recorded a finding that the prosecution has failed to prove any recovery or theft by the private respondents.

Having given thoughtful consideration to the submissions of learned counsel for the petitioner, this Court finds the instant revision is

completely devoid of any merit.

No question of law much less substantial has been raised in this revision.

This Court, while exercising its revisional powers has very limited jurisdiction, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally.

Learned counsel for the petitioner has not been able to show any such illegality or infirmity in the judgments of both the Courts below.

Admittedly, the petitioner-complainant was not present at the spot and had not seen the persons who have harvested the millet crop from his field. In his complaint Ex. PW-4/A, he alleged that on 19.11.2012, when he along with his companions went to his fields for harvesting the millet crop with the help of police, he found that the millet crop sown in 16 acres of land had already been harvested. His knowledge about the accused persons is hearsay as PW-1 Ramesh Kumar, driver of the complainant told him about the harvesting of crop by the accused persons on 20.11.2012. Thereafter, he moved the complaint against the private respondents on 23.11.2012 i.e. after four days of the occurrence. It is quite surprising that as to why complainant did not file the complaint to the police on the same day as the police was also accompanying with him. The complaint Ex. PW-4/A is silent about the source of knowledge of the complainant-petitioner about the accused persons.

PW-1 Ramesh Kumar, while appearing in the witness box

admitted that he was working as driver of complainant for the last 7-8 years. His testimony becomes doubtful from the fact that he claims to have seen the accused-private respondents harvesting the crop on 18.11.2012, but neither he stopped them from doing so, nor he had informed the complainant on the same day, rather he told the complainant about the accused persons on 20.11.2012. He also admitted that he told the name of accused Ram Niwas as Omdutt and did not know the names of accused persons because the incident occurred long back. The sequence of events has made the case of the prosecution doubtful. Both the Courts below have rightly arrived at the conclusion that delay in lodging the FIR by no stretch of imagination is justified and the present FIR was lodged against the private respondents as a counter blast to the civil litigation between the parties.

The case of the prosecution becomes doubtful for want of any recovery of alleged harvested crop. No case property was ever produced in the Court as the same was never recovered. Thus, in totality of the facts and circumstances of the case, there is neither any recovery nor any theft proved by any cogent or reliable evidence. It is well settled principal of criminal jurisprudence that none is guilty unless and until his guilt is established by the prosecution beyond the shadow of any reasonable doubt. Prosecution in the instant case has failed to discharge this burden. Both the Courts below have recorded concurrent findings while acquitting the private respondents.

For the reasons recorded above, there is no merit in the

revision petition and the same is hereby dismissed.

Since, revision petition has been dismissed on merits, therefore, no separate order is required to be passed in the application under Section 5 of the Limitation Act for condonation of delay of 06 days in filing the instant revision petition. The same also stands disposed of, as such.

September 23, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No