

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CRM-A-493-MA-2013

Date of decision: 25.08.2023

Sohan Singh

.....Applicant/Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. R.S. Mamli, Advocate
for the petitioner.

Ms. Trishanjali Sharma, DAG, Haryana.

Mr. S.S. Dinarpur, Advocate
of respondents No.2 to 4.

MANJARI NEHRU KAUL, J. (ORAL)

1. The appellant-complainant (hereinafter referred to as 'the complainant') is impugning the judgment and order dated 28.08.2010 passed by learned Judicial Magistrate 1st Class, Kurukshetra and order dated 06.03.2013 passed by learned Sessions Judge, Kurukshetra whereby respondents No.2 to 4-accused have been acquitted of the charges.

2. Learned counsel for the complainant submits that the impugned order and judgment dated 28.08.2010 passed by learned Judicial Magistrate 1st Class, Kurukshetra vide which respondents No.2 to 4-accused were acquitted of the charges framed against them under Section 447 read with Section 34 of the IPC cannot be sustained as there has been total misappreciation of the evidence led, by the Trial Court. Learned counsel has submitted that one Gurdeep Singh who was

owner in possession of 10 acres of land, along with respondents No.2 and 3 had purchased half share of "Rasta" which was 108 karams in length vide registered sale deed dated 21.07.1998 (Ex.C1) and wherein a specific recital qua "Rasta" in question was detailed. After purchasing the aforementioned 10 acres of land along with "Rasta" in question from Gurdeep Singh vide two registered sale deeds dated 12.04.2002 and 22.02.2002, the complainant had come into possession of "Rasta" in question. On 15.12.2002, however, the accused respondents illegally demolished the "Rasta" which was both in the ownership as well as in the possession of the complainant. Learned counsel has vehemently argued that though one eye witness to the occurrence in question i.e. CW-2 Surender Pal Singh, while stepping into the witness box had categorically deposed that he had seen all the accused demolish "Rasta", however, the Court below had chosen to ignore this vital piece of evidence. Learned counsel has further argued that the learned Court below had erroneously relied upon the judgment of Civil Court qua there being no "Rasta" even though the judgment of the Civil Court had been impugned by way of an appeal and still further the existence of the "Rasta" stood proved in view of the recital contained qua the same in the registered sale deed dated 21.07.1998 (Ex.C1).

3. Per contra, learned counsel appearing for respondents No.2 to 4-accused while opposing the prayer and submissions made by the counsel opposite has vehemently argued that no evidence much less cogent had been led by the complainant in respect of his possession of the "Rasta" in question. Learned counsel has argued that a mere recital of the "Rasta" in the sale deed, without any entries in the revenue

records qua its ownership and possession would not have been enough to establish the possession of the complainant. It has also been argued that the accused had raised identical pleas qua the existence of the “Rasta” before the Civil Court which had been rightly disbelieved by the Civil Court in its judgment dated 02.06.2009. In support, learned counsel has drawn the attention of this Court to Ex.D1 and D2 which are judgments dated 05.02.2007 passed by learned Additional district Judge, Kurukshetra and judgment dated 02.06.2009 passed by learned Additional Civil Judge (Sr. Divn.), Kurukshetra.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. The complainant is assailing the order of acquittal which has been recorded in favour of the accused for offences under Sections 447/34 of the IPC. Section 441 of the IPC defines the offence of criminal trespass for which the punishment is provided under Section 447 of the IPC. For facility of reference Section 441 of the IPC is reproduced hereinbelow:-

***“441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.*”**

6. Trite to say that sine qua non for establishing an offence under Section 441 of the IPC is that property in question on which the accused have trespassed must be in the possession of the person alleging the offence i.e. complainant in this case. In the case in hand, to

prove the existence of the “Rasta” and his possession over it, the complainant has relied upon Ex.C1 i.e. registered sale deed executed by accused No.1 in favour of Gurdeep Singh and accused Nos.2 and 3. A perusal of the deposition of CW-1 Harinder Kumar, Record Keeper, reveals that neither any site plan was attached with the sale deed nor was he able to tell whether there had been any “Rasta” in existence, as claimed by the complainant. Furthermore, the complainant neither produced on record any revenue records nor any document to establish the existence of “Rasta” and his possession thereof. Still further, it is a matter of record that this very question concerning the possession and ownership of the complainant qua the “Rasta” was raised before the Civil Court, however, the Court did not find any merit in the same. Not only this, in another civil suit instituted by the complainant, the Civil Court in its judgment dated 09.10.2009 (Ex.D4) categorically observed that though the complainant had claimed to be in possession of the land, on the basis of an agreement to sell dated 03.10.2002, executed by Gurdeep Singh, however, since said Gurdeep Singh was himself not in possession, therefore, question of the land being handed over to the complainant did not arise.

7. Hence, in the above said facts, this Court has no hesitation to hold that for the purpose of commission of an offence under Section 441 of the IPC, the complainant failed to prove his possession over the property. Furthermore, the testimony of the alleged eye witness CW-2 Surender Pal Singh, that he had seen the accused demolish the “Rasta” would also carry no weight once it is the admitted case of the complainant himself that he and the accused were co-sharers of the

“Rasta” in question.

8. The instant leave to appeal being devoid of any merit is hereby dismissed.

25.08.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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