

CRM-A-1167-MA-2016 (O&M)

N.C. No.2023:PHHC:066142

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

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CRM-A-1167-MA-2016 (O&M)

Date of decision: 01.05.2023

Joginder Singh

....Appellant

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J.S. Thind, Advocate for
Mr. Hitesh Kaplish, Advocate for the appellant

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

CRM-19106-2016

For the reasons stated in the application, same is allowed. Delay of 22 days is hereby condoned.

CRM-A-1167-MA-2016

1. The present leave to appeal has been preferred against the impugned judgment dated 04.03.2016, passed by learned JMIC, Phagwara, whereby respondent No.2 has been acquitted of the charges framed under Sections 447 and 506 IPC against him.

2. Precisely, the facts of the case are that accused-respondent No.2 had trespassed into the land of appellant and had sown wheat crop in the field in possession of the appellant and had further criminally intimidated him. There had

been a dispute between the appellant and father of the accused, regarding a land measuring 1 kanal and 2 marlas, the possession of which was finally handed over to the appellant. The Investigating officer recorded the statement of the appellant and a ruqa was sent for registration of the case. The police officials inspected the spot, recorded the statements of witnesses and prepared the site plan. The accused was arrested and after the completion of investigation, challan against the accused was prepared and presented before the Court for trial.

3. The trial Court after the perusal of the report under Section 173 Cr.P.C., and documents attached thereto, concluded that a *prima facie* case under Sections 447 and 506 IPC was made out against the accused and he was accordingly served with a charge sheet, to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, the prosecution examined as many as 4 witnesses. Thereafter, the prosecution evidence was closed by order of the Court. The statement of the accused was recorded under Section 313 Cr.P.C., wherein all the incriminating evidence was put to him, which he denied and alleged false implication. In defence, he did not examine any witness.

5. On scrutinizing the evidence led by the parties, the learned trial Court acquitted the accused-respondent No.2 of the charges levelled against him.

6. Hence, the present application is for leave to appeal.

7. Learned counsel for the appellant submits that the learned trial Court has committed grave error while acquitting the accused-respondent. He contends that the trial Court had misread the facts on record and failed to take into

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consideration the deposition of prosecution witnesses, PW3 Joginder Lal (then Kanungo) who stated that he had himself handed over the possession of 1 kanal and 2 marlas of land to the complainant-petitioner. Further submitted that the evidence of PW2-Karamjit Singh, the photographer who had clicked the pictures of the site had been ignored.

8. Heard.

9. It would be apposite to refer to the judgment passed by learned trial Court while acquitting respondent No.2, which reads thus:

“12. The entire proceedings of the case have been initiated on the statement of complainant which is a material piece of evidence but in the absence of examination of complainant, the statement made by him is not proved. Complainant was the best witness to depose about the offence alleged against accused or to depose about the criminal trespass and threat of criminal intimidation but non examination of complainant is fatal to the case of prosecution and in his absence, the identity of accused person and the offence alleged against them is not established.

13. In view of the above discussion of the entire evidence led by prosecution, it is clear that there are several lacunae in the case of prosecution, which raise doubt about the prosecution case. In view of the same, it can be safely held that the charges levelled against accused are not proved. Hence, the accused is hereby acquitted of the charges framed against him. His bail bonds and surety stands discharged. The accused is further directed to furnish fresh personal bond in the sum of Rs. 30,000/- to ensure his presence before the higher/appellate court as and when required. Case property, if any, be dealt with in accordance with law. File be consigned to the record room, Phagwara, after due compliance.”

10. The criminal law machinery, in the present case, has been set in motion on the statement of complainant-appellant, which led to registration of

FIR. Thus, failure on his part to be examined as a material witness, has proved fatal to the case of prosecution, since the identity of the accused person is not proved. Complainant was the best witness to depose about the alleged criminal trespass and threat of criminal intimidation, thus his non-examination was fatal to the case of the prosecution. Though, PW2 had deposed that the photographs of the site near the government godown were clicked by him, however, he did not present the bill book of his shop, thus casting a doubt on his statement. Further, the statement of PW4 recorded by the police under section 161 Cr.P.C. is not on record, hence his presence at the spot is doubtful. Moreover there were several lacunas in the case of the prosecution, which created a dent in the prosecution version.

11. The Court below has examined the evidence and acquitted the accused-respondent No. 2, as the complainant could not establish his guilt.

12. Hon'ble The Supreme Court in **Basheera Begam vs. Mohd. Ibrahim**, (2020) 11 SCC 174, had observed and held that, "...If upon analysis of evidence two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and order of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the Court might reverse an order of acquittal if the Court finds that no person properly instructed in law could have upon analysis of the evidence on record found the accused to be 'not guilty'..."

13. This Court is of the view that the failure on part of prosecution to

examine the appellant as a witness, leading to his statement not being proved and material inconsistencies referred to in the trial Court judgment, are valid grounds for acquitting the accused persons. Thus, it can be said to be a “possible view”.

14. Consequently, this Court finds no perversity or illegality in the impugned judgment, which calls for interference as such. Accordingly, the application for leave to appeal is dismissed.

(AMAN CHAUDHARY)
JUDGE

01.05.2023
S.Sharma(syr)

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