

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

CRM-A-1545-MA-2014
Date of Decision: 29.04.2023

SADHA SINGH

...Applicant

Versus

MALOOK SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Salil Bali, Advocate
for the applicant.

HARSH BUNGER, J.

Applicant/complainant-Sadha Singh, filed a complaint under Sections 427, 430, 431, 432, 504, 506, 323, 380, 148 and 149 of the Indian Penal Code against the accused-respondents herein.

2. Vide judgment dated 18.07.2014 passed by learned Chief Judicial Magistrate, Ferozepur, all the accused-respondents were acquitted of the charges framed against them. Accordingly, the applicant-appellant (complainant) has filed this application under Section 378(4) of the Code of Criminal Procedure, for grant of leave to file an appeal against the aforesaid judgment dated 18.07.2014.

3. Briefly, applicant-Sadha Singh had filed the above-said complaint by stating that he is an agriculturist and he along with his brother Shingara Singh owns agricultural land measuring 20 *kanals* in Village Langeana. It was stated in the complaint that there is a sanctioned *khal/water course* running from Mogha No.110900/L Rajbaha Bute Wala, which passes through many other villages alongside the road which leads from Ferozepur to Mallanwala. The said *khal/water course* was stated to be in existence before the purchase of land by the applicant-complainant i.e.

for the last about 20-30 years and the applicant-complainant claimed to be

irrigating his agricultural land through the said Rajbaha and paying lagan to the government. It was alleged in the complaint that the accused-respondents were inimical towards the complainant and on 04.02.2007 at about 7:00 a.m., the respondents-accused persons armed with *dangs*, *kahies* (*spades*) etc. came upon the land of the applicant-complainant and started to demolish the *khal* in question forcibly and illegally, in order to cause harm and loss to the applicant-complainant. It was further alleged that the complainant along with wife-Sukhwinder Kaur and daughter-Gurmeet Kaur, were present in the fields and they tried to restrain the respondents-accused persons from demolishing the *khal/water course*, upon which, respondent-accused No.1 (Malook Singh) gave slaps to the complainant and he fell down and raised an alarm “*na maro na maro*”, whereupon, Kabal Singh (Lambardar) and Mohinder Singh son of Udham Singh came at the spot. As per the complaint, wife of the complainant tried to save the complainant from the respondents-accused persons then respondent-accused No.2 (Surjit Singh) and respondent-accused No.3 (Rachhpal Singh) caught hold of her from her hair and pulled her hair and thereafter, respondent-accused No.4 and 5 namely, Jassa Singh and Jarnail Singh, respectively, gave *fists blows* to the complainant and his wife and they also used filthy language against them. It is also alleged that the accused persons threatened to kill the complainant and his family members, if they restrain them from demolishing the *khal/water course*. As per the complaint, the entire occurrence was witnessed by the wife and daughter of the complainant as well as above-said Kabal Singh (Lambardar) and Mohinder Singh son of Udham Singh. It is stated in the complaint that subsequently, the accused persons have constructed a residential house over the land underneath the *khal/water course* belonging to the Canal

Department. It was claimed that the complainant approached the police and narrated the entire version; however, no action was taken by the police and thereafter, the complainant moved applications before the Deputy Commissioner, Ferozepur and other higher authorities for taking action against the accused persons, which were marked to BDPO, Ferozepur, XEN Irrigation, Ferozepur but still no action was taken. It is alleged that the complainant moved one application to the Divisional Canal Officer (DCO), HariKe Canal Division, Ferozepur, under Section 30 FF(2) of the Northern Indian Canal Act that the other party had demolished the *khal/water course* in question and had started residential construction over the same, which was sent to the Zileadar for report. It is claimed that the Zileadar inspected the spot and prepared the site plan from the patwari and recommended the case to the Sub Divisional Officer, for restoration of *khal/water course* in question. It is also claimed that the DCO (Divisional Canal Officer) decided the application in favour of the complainant by observing that the accused persons had demolished the *khal/water course* in question forcibly and a further direction was issued to restore the said *khal/water course*. Accordingly, it was claimed that the accused persons have caused loss to the three crops of the complainant worth Rs.1,50,000/- and as such, the complainant was entitled to recover the same from the accused persons. It was submitted that the accused persons have committed such offences, for which, they are liable to be summoned and punished accordingly.

4. In preliminary evidence, the complainant examined himself as CW1 and further examined Gurmeet Kaur as CW-2 and one Kabal Singh as CW-3.

5. On appraisal of the preliminary evidence, the respondents-accused were summoned to face trial for the offence under Sections 427,

430, 431, 432, 504, 506, 323, 380, 148, 149 of the Indian Penal Code by the learned Judicial Magistrate Ist Class, Ferozepur, vide order dated 17.11.2009.

6. Subsequently, the respondents-accused were charge sheeted under Sections 148, 149, 379, 430, 432 and 506 of the Indian Penal Code, to which, the respondents-accused pleaded not guilty and claimed trial.

7. In post-charge evidence, the respondents-accused cross examined the complainant-Sadha Singh (CW-1) and Gurmeet Kaur (CW-2).

8. After closure of post-charge evidence by the complainant, the respondent-accused were examined and their statements were recorded under Section 313 of the Code of Criminal Procedure, to apprise them of the incriminating material appearing against them, which was denied by the respondents-accused by claiming that they were innocent and false case has been planted against them. In defence, the respondent-accused examined one Amrik Singh as DW-1.

9. Learned trial court, after appreciating the evidence placed on record, acquitted the respondents-accused of the charges framed against them and the complaint was ordered to be dismissed vide judgment dated 18.07.2014, by observing as under :-

“10. I have heard the contentions of learned counsel for both the parties and gone through the case file with their able assistance. It is opined that accused were summoned under sections 427, 430, 431, 432, 504, 506, 323, 380, 148, 149 of the Indian Penal Code. When the accused appeared before the court the charge under sections 379/430/432/506/148 read with section 149 of the Indian Penal Code was framed against the accused. I am of the opinion that the complainant has miserably failed to

prove the charges against the accused in the lack of cogent and convincing evidence on the record. Perusal of the file shows that only Sadha Singh son of Dhara Singh complainant as well as Gurmeet Kaur daughter of Sadha Singh appeared at the time of after charge evidence though it is admitted by both these witnesses that people had gathered at the spot. In these circumstances, prosecution has miserably failed to examine any independent witness to prove the offence against the accused. Though on this ground the statement of complainant as well as his daughter cannot be discarded being interested evidence but the court must evaluate the evidence with care and caution. After appreciating the evidence on record this court comes to the conclusion that prosecution has failed to prove that any damage was caused to public drainage and the accused caused injuries to work of irrigation by wrongfully diverting water. No such evidence is on the record that any such public drainage was in existence at the spot at the time of alleged occurrence. No witness from the Canal Department is examined by the prosecution in support of their contention. Photo copy of Aksh Shajra is placed by the complainant but it does not prove the contention of the complainant as the same is not proved according to law. Moreover, the order of the Civil Court dated 28.9.2010 supersedes the entire record placed by the plaintiff (though not proved by complainant as per provisions of law). Certified copy of the order dated 28.9.2010 passed by Sh. K.K. Bansal, the then Additional Civil Judge (Sr. Division), Ferozepur in Civil Suit titled as Malook Singh Vs. Sadha Singh and another clarifies that present accused Malook Singh filed suit for permanent injunction against the present complainant Sadha Singh and another for restraining them from interfering into the possession over the residential house. As well as agricultural land by way of carving out water channel from the suit land consisting of Khewat No.44/43, Khatoni

No.65, Khasra No.5, Killa No.3/2(0-1) 8/2(0-1) 10(2-18) and khewat No.118/110 khatoni No.184 khasra No.5 Killa No.1 1/1(1-17) khasra No.6/6 (0-3) 15/1 (0-1) 11/2(2-12) totaling 7 kanals 15 marlas situated in Village Basti Ahmewali is concerned, it comes out in that civil suit the present complainant Sadha Singh got recorded his statement that he will not interfere in the possession of Malook Singh. It is not out of sight that in view of separately recorded statement of present complainant as well as present accused No.1 the suit of Malook Singh was ordered to be dismissed as withdrawn. That civil litigation was decided in the year 2010 and the present complaint is filed in the year 2008 i.e. after filing the civil suit by Malook Singh in the year 2007 but this complaint is none else but a counter blast of the civil litigation. The complainant admitted that a Civil Suit was filed by present accused Malook Singh and in that Civil litigation the present complainant had appeared and on his statement that Civil Suit was dismissed as withdrawn. It comes out that to tell lie, the complainant stated to the extent that present complaint was filed by the complainant before filing that civil litigation. The complainant is silent regarding the khasra numbers from where the alleged sanctioned Khal/water course is running. The complaint is vague that in which khasra number the Khal/water course is in existence. The statements of complainant as well as Gurmeet Kaur are also not supportive to the story of the prosecution. The complaint before SHO, Police Station City, Ferozepur is dated 18.1.2013 though the alleged occurrence is dated 4.2.2007 at about 7 A.M. No explanation comes forward for lodging the complaint after a long unexplained delay. Though as per own statement of Sadha Singh they directly went to Police Station after the occurrence and lodged the complaint. No such complaint of the same day is on the judicial file. It is highly untrustworthy that the police reached at the spot on the

same day and apprehended the accused but later on the police released the accused on the way. The complainant admitted that he has not lodged any complaint against those police officials. As per contention of the complainant he filed one application before Deputy Commissioner after 5-10 days but admittedly he has not mentioned in that application regarding giving of injuries by the accused persons. In this regard the story becomes falsified by the own statement of complainant. Even the complainant admitted that he filed one application before Minister of Irrigation in which he had not mentioned regarding the beatings given by accused party. Admittedly this fact was first time introduced when the present complaint was filed. From the statement of complainant it comes out that his testimony is not reliable and liable to be discarded being highly untrustworthy.

11. It is further important to mention here that complainant himself admitted that the Patwari of the village never demarcated the suit site though he stated that the map of irrigation patwari is part of the present complaint but again same is not on the file and not proved ever as per law. It is important to mention here that complainant admitted this fact that house of Malook Singh accused is over the suit site which is in 10 to 15 marlas. The case of the complainant is not that accused raised construction over the suit site before filing of the complaint, rather from the evidence on record it comes out that house of the accused was already in existence in the year 2007 and when the present complainant started interfering in the possession of the present accused Malook Singh, then Malook Singh filed suit for permanent injunction which was withdrawn by Malook Singh on the statement of present complainant.

12. As well as statement of Gurmeet Singh is concerned, the same is also not sufficient to connect the accused with the present occurrence. Contrary to the

statement of Sadha Singh, Gurmeet Kaur stated that neither the accused were called at Police Station nor the police came at the spot. She totally shown ignorance if the fact regarding beating was mentioned in the complaint or not. She categorically stated that D.C. Sahib marked the application to Irrigation Department and the concerned official reached at the spot and prepared the site plan and demolished Khal. I am of the opinion that if the site plan of the spot of occurrence was prepared by the concerned officials then what was the hitch not to produce and prove that site plan on the record by the complainant. By withholding the best evidence by the complainant, adverse inference goes against the complainant. She is ignorant if any site plan from the Patwari of Canal Department was obtained or not. No other evidence is on the record except these two statements of complainant as well as his daughter. These two statements does not suggest the court to convict the accused on this weak testimony when there is no evidence that any public drainage was in existence at the spot of occurrence or the accused caused injuries to work of irrigation. Accordingly in the lack of evidence the benefit of doubt goes in favour of the accused and they are acquitted of the charges framed against them and the complaint is ordered to be dismissed. The earlier bail/surety bonds furnished by the accused stand discharged. File be consigned to the Judicial Record Room.”

10. A perusal of the impugned judgment passed by the trial Court would manifest that the prosecution has miserably failed to examine any independent witness to prove the offence against the respondents-accused. Learned trial court observed that although the statement of the complainant and his daughter Gurmeet Kaur, is available on record and cannot be discarded being interested witnesses; however, after appreciating their evidence, it was concluded that the prosecution had failed to prove that any

damage was caused to the public drainage and/or the accused caused damage to work of irrigation. It has also been held that no evidence has been put forth to show that any public drainage was in existence at the spot at the time of the alleged occurrence and no witness from the Canal Department has been examined by the prosecution. Learned trial court held that merely placing on record a photocopy of the *Aksh Shajra* would not prove the contention of the complainant as even the said *Aksh Shajra* has not been proved in accordance with law. Learned trial Court has further referred to an order dated 28.09.2010 passed by the Civil Court in Civil Suit titled as ***Malook Singh vs Sadha Singh and another***, wherein a permanent injunction was sought against complainant Sadha Singh and others for restraining them from interfering into the possession over the residential house as well as the agricultural land by carving out water channel from the suit land consisting of *Khewat No.44/43, Khatoni No.65, Khasra No.5, Killa No.3/2(0-1) 8/2(0-1) 10(2-18) and khewat No.118/110 khatoni No.184 khasra No.5 Killa No.1 1/1(1-17) khasra No.6/6 (0-3) 15/1 (0-1) 11/2(2-12) totaling 7 kanals 15 marlas* situated in Village Basti Ahmewali.

11. It was observed by trial Court that in the said suit, complainant Sadha Singh had got recorded his statement that he will not interfere into the possession of Malook Singh; accordingly, the suit was dismissed as withdrawn. It has been noticed by trial Court that the Civil Suit was filed by Malook Singh in the year-2007 and the complaint was filed in the year-2008; accordingly, it was held that the complaint was a counter-blast to the civil litigation. Learned trial Court has further returned the findings that the complaint was silent regarding the *khasra nos.* from where the alleged sanctioned *khal/water course* was running and to that extent, the complaint is stated to be vague.

12. It has been observed by trial Court that the complaint before the Station House Officer, Police Station City, Ferozepur is dated 18.01.2013; though the alleged occurrence is dated 04.02.2007 and there was no explanation forthcoming for lodging the complaint after long unexplained delay. Learned trial Court has further observed that the complainant had admitted that he had filed one application before the Minister of Irrigation; however, there was no averment regarding giving of beatings by the accused party. The trial Court has further taken note of the fact that the complainant himself had admitted that the *Patwari* of the village never demarcated the suit site and it was observed that from the evidence on record, it comes out that the house of the accused was already in existence in the year-2007 when the complainant started interfering into the possession of Malook Singh, whereupon, Malook Singh filed a suit for permanent injunction, which was withdrawn by Malook Singh on the statement of the complainant. Learned trial Court has also evaluated the statement made by Gurmeet Kaur.

13. After perusing the impugned judgment and considering the reasons recorded by the trial Court, while acquitting the respondents, this Court is in agreement with the findings returned by the trial Court as the applicant-complainant had failed to prove his case against the respondents-accused beyond shadow of doubt.

14. The learned Magistrate has taken a reasonable and probable view on appreciation of evidence.

15. Hon'ble Apex Court in the case of *Ashok Kumar v. State of Rajasthan 1991(1) RCR (Criminal) 14*, has held that interference in an appeal against acquittal would be called for only if the judgment under appeal is perverse or is based on misreading of evidence.

16. Learned counsel for the applicant-complainant has failed to point out any misreading of evidence by the trial Court.

17. Further in *C. Antony v. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750*, it was held that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible. In this case, no exceptional circumstances have been brought forth so as to warrant interference in the impugned order.

18. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

19. In view of the above discussion and finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378(4) Cr.P.C. for leave to appeal is declined.

20. All pending application/s, if any, shall stand closed.

April 29th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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