

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

235

CRM-A-688-2020 (O&M)

Date of decision: 22.08.2023

KULWINDER SINGH

....Applicant

Versus

GURCHARAN SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present : Mr. Gaurav Singla, Advocate for the applicant/appellant.

HARNARESH SINGH GILL. J.(Oral)

1. Challenge is against the judgment dated 17.01.2020 passed by Judicial Magistrate First Class, Sunam, vide which the complaint preferred by the applicant-complainant Kulwinder Singh was dismissed.
2. Counsel for the applicant-complainant submits that the learned Magistrate while dismissing the complaint had not taken into consideration the evidence brought on record by the complainant as CW1 Kulwinder Singh, CW2 Balihar Singh and CW3 Gamdoor Singh. He further submits that on 06.07.2015 at about 11:00 PM theft of 15 safeda trees has been committed, which belongs to the petitioner and only one tree was left in the field. The theft has been committed by the respondents-accused persons. Thereafter, the complainant made a representation, the inquiry was initiated by the DSP, who has recommended for registration of FIR under Section 379 IPC and subsequently FIR was got registered. Later on the respondents-accused persons were declared innocent, thus, applicant had no option left but to file the present complaint. He further

submits that the applicant is the owner of the property in question on which the trees were planted and theft has been committed.

3. I have heard, learned counsel for the applicant-complainant and have gone through the record of the case.

4. The learned Magistrate had duly considered that though the applicant-complainant has been shown to be the owner of the property but he is the co-sharer in the said property along with one Gurcharan Singh i.e. the present respondent No.1, the relevant part of the same reads as under:-

“17. Complainant in order to substantiate his contentions has heavily relied upon documents inquiry report prepared by DSP Sub-division Dirba, dated 15.9.2015 Ex. C6 and statement of Gurcharan Singh dated 15.9.2015 Ex. C9. It is vehemently argued by Id. counsel for the complainant that DSP Dirba after inquiry submitted a detailed inquiry report Ex. C6 to the effect that theft was committed by accused persons but despite said inquiry report no action was taken against the accused persons by police officials. It is further contended by id counsel for the complainant that in his statement Ex. C9 recorded before the police, accused Gurcharan Singh has duly admitted the fact of him committing theft of safeda trees in question. However, in the considered opinion of this court argument so raised by Id. counsel for the complainant holds no merit. Complainant though his predominantly relied upon document Ex. C6 and Ex. C9. However, it is pertinent to mention here that document Ex. C6 and Ex. C9 have not been tendered into evidence during the precharge as well as post-charge evidence by complainant Said documents were placed on record by CW4 HC Manjit Singh who was examined by complainant during the preliminary evidence. However, it is pertinent to mention here that CW4 HC Manjit Singh was neither examined by the complainant during precharge

evidence nor during post-charge evidence. Opportunity to cross-examine CW4 HC Manjit Singh was thus, never granted to the accused persons and therefore, in the considered opinion of this court documents Ex. C6 and Ex. C9 cannot be looked into by this court while deciding present case. In the considered opinion of this court, document Ex. C6 and Ex. C9 have not been proved on record by complainant in view of the provisions of Indian Evidence Act.

18. In order to prove the offences u/s 379 and 427 of IPC against the accused persons, complainant was required to prove on record existence of safeda trees in question and fact that complainant was owner of the same. However no such evidence has been brought on record by complainant. Oral testimonies of CWI Kulwinder Singh, CW2 Balihar Singh and CW3 Gamdoor Singh are not sufficient to connect the accused persons with the offences in question. The documents application moved by complainant to SSP Sangrur Ex. C1, postal receipt Ex. C2, jamabandi for the year 2009-10 Ex. C3 and jamabandi Ex. C16 placed on record by CWI Kulwinder Singh are not sufficient to prove ownership of the complainant over the safeda trees in question or the property in which trees in question were sown by complainant. In the considered opinion of this court, complainant has failed to prove guilt of the accused persons beyond the shadow of reasonable doubt.”

- 5. Keeping in view the above, no interference is called for.
- 6. Dismissed.

(HARNARESH SINGH GILL)
JUDGE

22.08.2023
Amandeep

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