

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

CRR No.35 of 2022

Date of Decision : 08.08.2023

Gurmukh Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.P. Vashisht, Advocate
for the petitioner.

Mr. Kunal Vinayak, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Complainant is in revision against the judgment dated 12th of April, 2021 passed by Ld. Sessions Judge, Gurdaspur affirming the judgment dated 25th of March, 2019 passed by Additional Chief Judicial Magistrate, Gurdaspur whereby the respondents/accused stand acquitted in FIR No.27, dated 26th of June, 2015 registered for the offences punishable under Sections 326, 323, 34 of the Indian Penal Code, at Police Station Ghuman Kalan..

2. FIR was registered after PW-4 ASI Bhappi Masih received MLR Exhibit PW9/A on 25th of June, 2018 *qua* injuries suffered by Gurmukh Singh son Shangara Singh, the petitioner. Statement of petitioner was recorded on 26th of June, 2015 wherein the petitioner claimed that on 22nd of June, 2015 at about 9.00 A.M. Karam Singh son of Gurnam Singh armed with *kirpan*, Harpreet Singh son of Satnam Singh armed with *datar*

and Malkiat Singh @ Golu armed with *gandasi* caused them injuries. After blood started oozing out of the injuries suffered by the petitioner and his mother the accused ran away from the spot.

3. Trial Court after analyzing the evidence on record found that the occurrence is of 22nd of June, 2015 and the FIR came into existence only on 26th of June, 2015. Thus there was unexplained delay of four days. Trial Court found that the said delay gains significance in view of the fact that as per the statement of Gurmukh Singh himself he was first given medical treatment at Primary Health Centre, Naushehra Majha Singh from where he claims to have been referred to Civil Hospital, Gurdaspur and the Police Post is within the premises of Primary Health Centre, Naushehra Majha Singh. More so there is nothing on record to show that the petitioner was referred by Primary Health Centre to Civil Hospital, Gurdaspur and Dr. Rajan Singh PW-9 when stepped into the witness-box to prove the injuries suffered by the injured admitted that possibility of injuries on Gurmukh Singh, Dalbir Kaur and Balkar Singh being result of friendly hands could not be ruled out. The Appellate Court while affirming the aforesaid findings observed as under :

“16. The weapons alleged recovered from the possession of accused were brought before the learned trial Court at the time of recording the statement of PW-4 ASI Bhapi Masih and exhibited vide MO1 to MO3. PW-4 ASI Bhapi Masih when subjected to crossexamination, as observed earlier, stated that there was no blood stained on the weapons of accused which he took in possession. He admitted as correct that these weapons can be

available in the market. Thus, as the weapons allegedly recovered from the possession of the accused are easily available in the market and after taking in police possession these weapons allegedly from accused, no parcel was prepared neither any seals affixed, therefore, the use of these weapons in the fight as alleged by the complainant and two other witnesses is highly doubtful.

The injuries on the person of PW-1 Gurmukh Singh as alleged by him, are highly doubtful because PW-4 ASI Bhapi Masih stated that the index finger of Gurmukh Singh which was alleged to be amputated in fighting, he did not take in possession and he cannot say whether the index finger of Gurmukh Singh might be cut in the occurrence, whereas PW-6 Dr. Raj Masih, who conducted medico legal examination of injuries of Gurmukh Singh and issued MLR Ex.PW9/A did not state that index finger of Gurmukh Singh was amputated. On the other hand he stated that this injury was, "An incised wound of about encircling the left hand index finger as left hand index finger is damaged at the injury". He did not say that index finger of Gurmukh Singh was amputated. This also creates doubt in the injuries as alleged by the complainant PW-1 Gurmukh Singh."

4. Counsel for the petitioner has not been able to demonstrate any legal infirmity in the judgments passed by the Courts below that can persuade this Court to invoke the revisional jurisdiction under Section 401 Cr.P.C.

5. The scope of the revisional jurisdiction of this Court while exercising jurisdiction under Section 401 Cr.P.C. in the matters related to concurrent findings of acquittal recorded by the Courts below has been well laid down by the Supreme Court in the case of **Thankappan Nadar vs.**

Gopala Krishnan (2002) 9 SCC 393, wherein it has been held as under :

“6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In **Akalu Ahir and Others v. Ramdeo Ram**, (1973) 2 SCC 583 this Court has (in SCC pp.587-88, para 8) observed thus:

"This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
- (ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;
- (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
- (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- (v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."

The Court further observed: (SCC p.588, para 10)

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go

unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.

(Emphasis added)”

6. In **Raj Kumar vs. State of H.P., (2008) 11 SCC 76**, Apex Court held that :

“7. In **Duli Chand v. Delhi Administration, (AIR 1975 Supreme Court 1960)**, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows :

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere."

8. In **State of Orissa v. Nakula Sahu and Ors., (AIR 1979 Supreme Court 663)** it was held that the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In **State of Kerala v. Puttamana Illath Jathavedan Namboodiri, 1999(1) RCR (Criminal) 808 : (1999**

(2) SCC 452) it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

9. We find that the trial Court and the Revisional Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction.”

7. Further, Apex Court in **State Rep. By The Drugs Inspector vs. Manimaran (2019) 13 SCC 670** held as under :

“15.....When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while arriving at that finding. As held in **State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452**, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”

8. In view of above, this Court does not find it to be a fit case to exercise revisional jurisdiction under Section 401 Cr.P.C. to upset the findings recorded by the Courts below. Resultantly, the present revision petition is dismissed.

August 08, 2023
Dpr

(PANKAJ JAIN)
JUDGE

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