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

**CRR-187-2015 (O&M)
Date of Decision: 08.08.2023**

Gurdeep Singh

.....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.K. Bokolia, Advocate for the petitioner.

Mr. Madhur Sharma, AAG, Punjab.

Ms. Gagandeep Grewal, Advocate for respondent No. 2.

ARUN MONGA, J. (ORAL)

CRM-1649-2015

For the reasons stated in application, same is allowed and delay of 21 days in filing the present petition is hereby condoned, subject to all just exceptions.

CRR-187-2015

Instant revision petition has been filed by petitioner/complainant against judgment dated 14.08.2014 passed by learned Additional Sessions Judge, Moga whereby appeal preferred by respondent No.2 herein against judgment and order of sentence dated 11.10.2013 passed by learned Judicial Magistrate First Class, Moga was accepted and respondent No. 2 was acquitted of the charge framed against him in complaint case under Sections 323, 506, 452 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC').

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

“2. Brief facts of the case of the complainant are that the complainant is an old man and is residing with his family at Talwandi Mallian. Dispute regarding the passage was pending in the Civil Court Moga. On 16.12.2005 at about 5 PM accused

Sukhvir Singh tried to make a passage in the land belonging to complainant, but son of the complainant namely Gurdeep Singh objected for that and on that issue some altercation took place between Sukhbir Singh and Gurdeep Singh, Sukhbir Singh gave abuses to Gurdeep Singh all other accused came in front of the house of the complainant at about 6.30 PM and started abusing the whole of the family of the complainant. At that time Harbhajan Singh relative of Gurcharan Singh was also present along with the complainant who came to meet the family of the complainant. Gurcharan Singh and Harbhajan Singh requested accused that Gurdeep Singh is not in the house and he went towards the village, so both of them requested all accused not to give filthy abuses to Gurdeep Singh and to the entire family, but accused entered in the house of the Gurcharan Singh complainant since deceased. Accused Sukhbir Singh was armed with dang, Baljit Singh was armed with dang and other accused were empty handed. Balbir Singh accused raised Lalkara that family of Gurcharan Singh complainant and Gurdeep Singh be taught a lesson for stopping Sukhbir Singh some time ago. Therefore Sukhbir Singh gave a dang blow on the hand of the complainant and Baljit Singh gave a dang blow on the left hand of complainant, thereafter Harbhajan Singh came to rescue the complainant then Sukhbir Singh gave a dang blow on the left elbow of the Harbhajan Singh. Thereafter, accused Nirmal Singh gave a blow from his right hand which hit on the chest of Harbhajan Singh and Harbhajan Singh fell down and received injuries on his left hand. Thereafter complainant and Harbhajan Singh raised hue and cry Marta Marta, then all the accused left the place of occurrence along with weapons. In the meantime son of complainant namely Gurdeep Singh came into the house and arranged the vehicle and admitted both injured in civil hospital where they were medically treated by the doctors. The matter was brought to the notice of the police but the police did not take any action against the accused. Hence the present complaint.”

3. Learned counsel the petitioner submits that respondent No. 2 herein was rightly convicted and sentenced in complaint case under Sections 323, 452 and 506 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for one year vide judgment and order of sentence dated 11.10.2013 passed by learned Judicial Magistrate First Class, Moga. However, learned First Appellate Court erred while accepting the appeal without appreciating in totality the pleaded case of petitioner/complainant. He further submits that learned First Appellate Court wrongly ignored the medical evidence on record as also ocular version in the shape of evidence of Gurdeep Singh (CW-2) and eyewitness Harbhajan Singh (CW-3).

4. On the other hand, learned counsel for respondent No. 2 supports the impugned judgment passed by learned First Appellate Court. She further points out that co-accused Sukhbir Singh and Balbir Singh, who were initially declared proclaimed offenders, were also rightly discharged by learned trial Court.

5. Arguments heard.

6. Impugned order dated 14.08.2014 is, *inter alia*, premised on the following reasoning:

“ It is found from record that alleged occurrence had taken place on 16.12.2005 at about 6.30 p.m. It is evidence from Ex.DI admission record relating to accused-appellant Nirmal Singh son of Karam Singh of village Talwandi Mallian, District Moga that he was admitted in hospital on 03.11.2005 at 10.30 a.m with history of fall into 40 feet deep well. It is further found from this document that he had suffered fracture of ribs on left side of chest and there was fracture of lower end of left radius bone. He was given POP cast for fracture of ribs and radius bone and there was associated haemothorax on left side of chest. Intercostal drainage tube was put on left side of chest on 11.11.2005. It has been deposed by this witness that usually it takes 2 to 3 months for fully recovery. This witness was cross-examined by learned counsel for complainant, but nothing could be extracted from his mouth to show that Nirmal Singh was in capacity to fight and inflict injury on 6.12.2005 and perhaps that is the reason that in statement made by Harbhajan Singh before ASI Palwinder Singh, which was incorporated in DDR No. 23 dated 07.12.2005 at 8.05 p.m. name of Nirmal Singh does not figure anywhere and alleged dispute is also shown to have taken place in open area outside the house of Gurcharan Singh and it appears that all these facts somehow have escaped notice of lower court. Thus, it is found from above referred evidence that complainant has given exaggerated account in his complaint and such a person should not have been believed to convict accused-appellant, who had already two broken ribs and one broken radius bone.

In the light of these facts and circumstances, I am of the considered view that judgment and order of sentence under challenge are not based on correct appreciation of evidence and facts, same are perverse. Hence appeal in hand is accepted and accused-appellant is acquitted of charge framed against him. Appellant is on bail. His bail bonds are discharged.”

7. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning by appreciating the evidence on record in right perspective. State prosecution machinery cannot be used to settle personal revenge between two disgruntled groups of persons.

8. It is a settled law, as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their 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.

9. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

“This Court held that “the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in **Ramesh Babulal Doshi**, further observed that ‘there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’”

10. In the instant case, findings recorded by learned appellate Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.
11. As an upshot, instant criminal revision petition is hereby dismissed.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

AUGUST 08, 2023
Harish Kumar

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