

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(239)

CRR-2478-2014
Date of Decision: 22.03.2023

Bagicha Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. TPS Makkar, Advocate, for the petitioner.
Mr. V. K.Gupta, AAG, Punjab.

HARKESH MANUJA, J.(ORAL)

By way of present revision, challenge has been made to the judgments dated 21.05.2014 as well as 05.11.2011 passed by the Courts of learned Additional Sessions Judge, Sri Muktsar Sahib and JMIC, Malout.

The facts of the case are that on account of an incident dated 08.01.2002 on an information given by respondent No.2 on 09.01.2002, FIR No.05 dated 09.01.2002, was registered at P. S. Sadar Malout, under Sections 441/323/148/149/506 IPC.

Upon trial, respondents No.2 to 7 were convicted and ordered to undergo sentence vide order dated 05.11.2011 in the following manner:

Sr. No.	Convict	Section	Imprisonment
1	Baldev Singh	U/S 325 IPC	To undergo rigorous imprisonment for one year and to pay file of Rs.500/- and in default of payment of fine, to further undergo R.I. for two months.
		U/S 506 IPC	To undergo rigorous imprisonment for six months and to pay file of Rs.200/- and in default of payment of fine, to further undergo R.I. for

			one month.
2.	Amrinder Singh, Kundan Singh, Kabal Singh, Tara Singh and Gurmit Singh	U/S 323 IPC	To undergo rigorous imprisonment for six months and to pay fine of Rs.200/- each and in default of payment of fine, to further undergo R.I. for one month.
		U/S 506 IPC	To undergo rigorous imprisonment for six months and to pay fine of Rs.200/- each and in default of payment of fine, to further undergo R.I. for one month.

Besides it, respondents No.2 to 7 were acquitted under Sections 382, 148 and 149 IPC vide judgment dated 05.11.2021 passed by JMJC, Malout.

Aggrieved thereof, two separate appeals were filed; Criminal Appeal No.147 of 16.11.2011, at the instance of respondents No.2 to 7 challenging their conviction; whereas Criminal Appeal No. 02 of 04.01.2012 at the instance of Bagicha Singh S/o Dogar Singh, challenging the acquittal of respondents No.2 to 7 as regards Sections 382/148 and 149 IPC.

The learned Additional Sessions Judge, Sri Muktsar Sahib, dismissed the Criminal Appeal No.02 of 04.01.2012 filed at the instance of Bagicha Singh thereby upholding the acquittal of respondents No.2 to 7 as regards Sections 148, 149, 382 IPC. On the other hand, Criminal Appeal No.147 of 16.11.2011 filed at the instance of respondents No.2 to 7 was modified while upholding their conviction as regards Section 323, 325 and 506 IPC, though, releasing them on probation by modifying the order of sentence.

By way of present revision petition, challenge has been made at the instance of Bagicha Singh to the judgment dated 21.05.2014 impugning the acquittal of respondents No.2 to 7 as regards Sections 382, 148, 149 IPC as well as their release on probation.

Learned counsel for the petitioner submits that in the present case, the Courts below have failed to take into consideration the recovery memo Ex.PW2/A vide which tractor used in the occurrence in question was recovered from respondent No.2 Amrinder Singh. He further submits that the said recovery memo was duly proved on record by PW-2 HC Gurlal Singh and thus, considering the aforesaid memo, the tractor used in the incident having been recovered from Amrinder Singh, the order of acquittal passed against respondents 2 to 7 as regards Section 382 IPC was wholly uncalled for.

On the other hand, learned counsel representing respondents No.2 to 7 refers to the decision passed by the first appellate Court at page 31 of the paper book and submits that admittedly the tractor in question owned by Baldev Singh who appeared as PW-6 and deposed that the same was even used by him for harvesting his fields even during the year 2002 and submits that once the tractor in question was used by Baldev Singh in the year 2002, the allegations of theft of the same as leveled by the petitioner against Amrinder Singh or his other accomplices was not made out.

I have heard learned counsel for the parties and gone through the paper book. I am unable to find any substance in the submissions made on behalf of the petitioner.

The issue regarding the allegations of theft of tractor in question having been committed by respondent No.2 have been dealt with in detail by the learned first appellate Court in Para 24 at Page 31 of the paper book while referring to the evidence available on record. The relevant portion from Para 24 is reproduced hereunder:

“So far as the submission of the learned counsel for complainant-appellant Bagicha Singh with regard to the commission of offences

punishable under Sections 382, 148 and 149 of the IPC by the appellants-accused is concerned, the same is not sustainable in the eyes of law. In this case, the prosecution witness Gurdial Singh while appearing in the witness box as PW5 has duly deposed in his cross-examination that the tractor was got punctured and they had themselves left the same at the place of occurrence. Even Baldev Singh PW6 has also deposed that he had always been harvesting his fields with the said tractor and that during the year 2002 he had harvested his fields with the same. Not only this, the tractor was produced before the Investigating Officer on 08.07.2002 vide recovery memo Ex.P2/A after six months from the date of occurrence which shows that the tractor was not in possession of the accused party. If the tractor would have been in the possession of the accused it could have been traced out immediately after the occurrence and not after gap of more than six months. When the tractor was got punctured at the spot and this fact has also been shown in the photographs Ex.D9 and Ex.D10, how, the accused could take it away. So, the learned trial Court has rightly held that no offence punishable under Section 382 of the IPC has been proved in this case”

In view of the reasons recorded hereinabove, once the tractor in question was admittedly used by the owner himself for harvesting his fields during the year 2002 itself, the allegations of its theft against Amrinder Singh were far fetched and were not made out from the evidence available on record. The first appellate Court, has even dealt with the recovery memo Ex.P2/A while recording that the same was prepared after a period of almost 6 months of the alleged incident and was thus rightly discarded being a feeble piece of

evidence. The learned first appellate Court has also gone on to discuss, the cross-examination of PW-5 Gurdial Singh who categorically deposed that tractor in question having got punctured was left at the place of incident.

In view of the discussion made hereinabove, no illegality or perversity has been found in the judgment dated 21.05.2014, passed by the first appellate Court and thus being unable to interfere in the limited revisional jurisdiction, the present revision petition is thus dismissed.

(HARKESH MANUJA)
JUDGE

22.03.2023
anil

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