

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

207

CRR-1046-2017 (O&M)
Date of decision: 12.05.2023

Varinder Kumar Bhatti

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Krishan Kumar, Advocate for
Mr. Narinder Lucky, Advocate for the petitioner

AMAN CHAUDHARY. J.

CRM-9345-2017

For the reasons stated in the application, the same is allowed. Delay of 32 days in filing the present revision petition is hereby condoned.

CRR-1046-2017

1. The instant revision petition has been filed challenging the judgment dated 20.10.2016 passed by learned Additional Sessions Judge, Amritsar, dismissing the appeal preferred by petitioner against the judgment dated 31.03.2016 delivered by learned Judicial Magistrate First Class, Amritsar vide which accused-respondents were acquitted of the charges framed against them.

2. Briefly put, the facts of the case are that while the petitioner was going out from his house, he had heard the accused-respondents spreading false rumors about his mother roaming in a naked condition with a 'diya' in her hands and that his son will die after the age of 14/15 years. The intention behind this

was to kill his children. This had caused great insult and defamation to the mother of the petitioner and his family. He accordingly submitted an application to the police regarding the defamation, pursuant to which FIR was registered and investigation was carried out. Upon its completion, challan was presented against the accused-respondents and charge under Section 505(2) IPC was framed, to which they pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined as many as 8 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C., were recorded, in which all the incriminating evidence was put to them, which was denied. They claimed false implication as well as pleaded innocence. In defence, no evidence was led.

4. On going through the evidence on record and hearing both the counsel for the parties, the trial Court acquitted the accused-respondents, vide impugned judgment dated 31.03.2016, as the prosecution could not establish its case against the accused beyond the shadow of reasonable doubt.

5. The petitioner had preferred an appeal against the judgment of acquittal, which was also dismissed by the learned Additional Sessions Judge, Amritsar vide judgment dated 20.10.2016.

6. Learned counsel for the petitioner contends that the Courts below have not properly evaluated the evidence led by the prosecution, which was sufficient to warrant conviction of the accused-respondents. The acquittal was only on the ground that the petitioner had not specified the date on which the occurrence took place. Further that the complaint was vague, whereas the petitioner had in his deposition stated the same. The Courts below have not only

misread the evidence on record but have not even given any cogent and plausible explanation for discarding the same.

7. Heard.

8. The trial Court while acquitting the accused-respondents vide judgment dated 31.03.2016 had observed that, "From the perusal of the file application which is Ex.P1, no date of the said occurrence was mentioned by the complainant Varinder Kuma and no specific allegation made by the complainant to the police and his complaint was vague. In his application no where complainant alleged that in whose presence the said word was alleged by the accused and the said witness made improvement in the statement recorded in the court. Moreover, application Ex.P1 was against six persons but in his examination in chief he resiled from the statement regarding identity of the three accused namely Bewi , Rahul and Jaja. This cast suspicious in the statement of witness PW1. Moreover, PW2 mother of the complainant in his application moved to the police which is Ex.PW2/I not mentioned a single word regarding that accused alleged that she wondering in the night in naked condition and not mentioned the said incident. Only she alleged that the accused Madho uttering bad words but no specific word was mentioned by the said witness in his application Ex.PW2/I which given to the police and in his examination in chief he made material changes in his statement and improve his version in the court from which it is show that the statement of the said witness is doubtful. Moreover, PW4 Sandeep Sabharwal , who is relative of the complainant, application moved by Varinder and Chanchal to the police they no where mentioned in whose presence the said accused using the bad word against the complainant's mother. No independent witness was examined by the prosecution in whose presence these word was uttered by the accused person. Section 505(2) are as

follow:

Statements creating or promoting enmity, hatred or ill-will between classes-Whoever makes,publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote or which is likely to create or promote on grounds of religion, race, place or birth, residence, language , caste or community or any other ground whatsoever, feeling of enmity, hatred or ill will between different religious , racial , language or regional groups or castes or communities shall be punished with imprisonment which may extend to three years or with fine or with both.

Ingredients of section 500(2) not fulfilled in this case.”

9. Affirming the aforesaid, the appellate Court recorded the following findings:

“11. From the submissions of learned counsel for the parties and from the perusal of the record it reveals that the allegations against the accused are that they made false rumors regarding the mother of the complainant that she was moving in the Mohalla at night without wearing any clothes and having lightened Diya in one hand and she was doing this in order to save her grand son aged about 14-15 years. To prove his case the complainant himself examined as PW1 and he stated that on 15.10.2012, at about 09:30 AM, when he was going for some work and came out of his house, then accused Madho, Geeta wife of accused Mado and Asha Rani wife of Sai Dass, resident of Church Wali Gali were standing in the Gali along-with other people of the area. All the above-mentioned accused were raising false rumors regarding his mother. PW1 was declared hostile by learned Adl.P.P for the State as he failed to identify Rahul, Bawi and Jaja. Then he was cross-examined. He failed to mention the work of the accused party. He also failed to mention when the accused persons used to go to work in the morning and as to when they come back in their house in the evening time. From the entire evidence of PW1 it is clear that on the one hand, the complainant wants to state against Mando, Geeta and Asha Rani, but on the other hand, he want to save Rahul, Bawi and Jaja. Even in his cross-examination, he failed to mention the working hours of the accused party. The complainant does not know about the working hours time of the

accused. It is unbelievable how the accused party were raising rumors about Chanchal. Similarly PW2 Chanchal also tried to corroborate the statement of PW1 Varinder Kumar Bhatti. She also turned hostile as she also wants to save Rahul, Bawi and Jaja. She also does not know about the working hours of the accused party. PW4 Sandeep Sabharwal, stated in his examination-in-chief that the accused party was raising rumors to cause loss to their family and property. The statement of PW4 Sandeep Sabharwal is not trustworthy as he failed to identify Rahul, Bawi and Jaja.

12. Section 505(2) of the IPC is reproduced as under :-

“(2) Statements creating or promoting enmity, hatred or ill-will between classes--Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

13. From evidence on the record it is clear that there is no rumour regarding religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. Moreover, the prosecution failed to prove that the accused were having intention for raising rumour regarding Chanchal.”

10. Hon’ble The Supreme Court in the case of **Venkatesan vs. Rani**, (2013) 14 SCC 207, observed that, “...the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code.” While placing reliance on **Akalu Ahir vs. Ramdeo Ram**, (1973) 2 SCC 583, it was reiterated that the following categories of cases 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 acquittal.”

11. Moving to the case in hand, counsel for the petitioner has not been able to demonstrate that there is any glaring defect in the procedure or a patent error is committed in ignorance of law, which has resulted in flagrant miscarriage of justice. The trial Court rightly finding that the testimonies of the witnesses to be suspicious, owing to the inconsistencies therein, which also lacked independent corroboration coupled with the vagueness of the complaint and the ingredients of Section 505(2) IPC not being fulfilled, acquitted the accused-respondents, which by giving cogent reasons was upheld by the appellate Court. Nothing pointed out could also persuade this Court to take a different view.

12. Applying the exposition of law as referred above to the facts of the present case, this Court finds no perversity or illegality in the judgments of the Courts below, thus, the present revision petition being bereft of merits is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

12.05.2023
S.Sharma(syr)

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