

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

CRR-1082-2018 (O&M)
Date of Decision: 16.03.2023

SATTO ALIAS SANTOSH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajesh Lamba, Advocate
for the petitioner.

HARSH BUNGER, J.

CRM-10284-2018

There is delay of 16 days in filing the present revision petition.

For the reasons recorded in the application, the same is allowed
and delay of 16 days in filing the present revision petition is condoned.

Criminal Misc. Application is accordingly disposed of.

CRR-1082-2018

This revision petition filed by complainant Satto alias Santosh,
is directed against judgment dated 21.10.2017, passed by Additional
Sessions Judge, Faridabad, vide which, the appeal filed by the State of
Haryana, against judgment dated 06.01.2017, passed by Judicial Magistrate
Ist Class, Faridabad, acquitting all four accused namely, Hira Lal son of
Devi Lal, Dungar Singh son of Devi Lal, Kali Charan son of Devi Lal,
Kundan Singh son of Devi Lal; of the charge framed against them, in case
FIR No. 277 dated 08.05.2010, for offences under Sections 420, 467, 468,

471 of Indian Penal Code, registered at Police Station Central, Faridabad, has been dismissed.

Briefly stated, facts of the case are that complainant Smt. Santo @ Santosh daughter of Devi Lal moved a complaint before S.P. Office, Faridabad with the allegations that after 2-2½ years of her birth, her mother Smt. Bhota had expired and her father solemnized second marriage with Kela Devi and out of their said wedlock, five sons and one daughter were born, out of whom one son namely Vasudev, who was unmarried, expired at the age of about 21-22 years. Complainant was married to Hari Kishan son of Khem Chand about 30-31 years back. Father of complainant expired on 2.7.1998 and after his death, the properties left by him were to be inherited by all his legal heirs. The brothers of complainant asked the complainant that they had delivered the documents of the properties left by their father to Patwari, who shall transfer the said property in the name of his legal heirs. However, some land was acquired by the government and her brothers assured her to call her as and when compensation amount is received. But about 11-12 months back when complainant came to her parental house, she came to know that her brothers had received some of the compensation amount and remaining amount is to be paid shortly. When the complainant enquired from her brothers in this regard, they asked her that she has no right over that amount as well as the land, as their father had already executed a Will in their favour. Thereafter, complainant filed a Civil Suit in this regard and after that she came to know that her brothers had also filed an affidavit and statements etc. by her name, whereas she neither ever came to court nor signed any affidavit or statement. She also came to know that accused persons after forging her signatures on various documents had grabbed her

share in the land as well as in the compensation amount and they also got executed a forged Will, as her father never disclosed about the said Will to her. Complainant also alleged that when she filed the suit, accused persons also used to threatened her and her husband as well as her children by saying that either withdraw the said case, otherwise face dire consequences.

On receipt of the complaint, formal FIR was registered. Investigation in the case started. After completion of investigation and other formalities, report under Section 173 of Code of Criminal Procedure, 1973 was filed in the Court against the accused persons and they were charge-sheeted under Sections 420, 467, 468 and 471 of Indian Penal Code; to which they pleaded not guilty and claimed trial.

The prosecution had examined PW1 Ved Ram who has proved the copy of LAC Case no. 152/1958 titled as Jeewan Vs. State of Haryana as Ex. PW1/A and the petition as Ex. PW1/B. PW2 Satto @ Santosh being the complainant of the case, had reiterated the facts as alleged by her in her complaint lodged regarding the alleged incident and proved her statement as Ex. PW2/C and copy of statement as Mark-A. PW3 Mukesh had proved the death certificate of Devi Ram as Ex. PW3/A. PW4/C Rajender had deposed that on 03.03.2010, he deposited one parcel in the Malkhana. PW5- Hari Kishan, being the husband of the complainant, had corroborated the case of complainant. PW6 ASI Om Parkash has deposed that on 02.03.2010, he deposited the case property in Malkhana through Rajemnder Singh. PW7 Prem Parkash had proved the summoned record regarding khewat no. i.e. jamabandi for the year 2001-02 and Mutation no. 1612 as Ex. PW7/ A to PW7/C. PW8 ASI Ashok Kumar had deposed that on 08.05.2010 on receipt of an application from DSP Central Faridabad he recorded the formal FIR

Ex.PW8/A alongwith endorsement Ex.PW8/B. PW10 Darshan Lal had deposed that on 06.05.2010, on receipt of report from FSL Madhuban and on finding difference between both the alleged signatures, as the same were found different, he asked some higher authorities to lodge the FIR. PW11 Dalvir Patwari had proved the jamabandi for the year 2001-02 regarding which applications Ex. PW11/A and PW11/B were also executed. PW11 Dinesh Kumar ACP had deposed that on 02.07.2010 the investigation of this case was handed over to him and on 09.08.2010 after their getting anticipatory bail, accused were joined into investigation.

Upon being examined under section 313 Cr.P.C, accused persons denied all the allegations levelled against them and pleaded false implication. In their defence the accused persons have produced the following documents:

<i>S.No.</i>	<i>Exhibit</i>	<i>Document</i>
<i>(1)</i>	<i>Ex.DA-1</i>	<i>Copy of judgment dated 27.10.2012.</i>
<i>(2)</i>	<i>Ex.DB</i>	<i>Copy of sale deed dated 10.04.1995.</i>
<i>(3)</i>	<i>Ex.DC</i>	<i>Copy of pleading in appeal No.56/2012.</i>
<i>(4)</i>	<i>Ex.DD</i>	<i>Copy of stay application in appeal No.56/2012.</i>
<i>(5)</i>	<i>Ex.DE</i>	<i>Copy of affidavit along with stay application.</i>
<i>(6)</i>	<i>Ex.DF</i>	<i>Copy of application U/O 41 Rule 27 CPC.</i>
<i>(7)</i>	<i>Ex.DG</i>	<i>Copy of affidavit of Satto in support of application.</i>
<i>(8)</i>	<i>Ex.DH</i>	<i>Copy of vakalatnama</i>
<i>(9)</i>	<i>Ex.DI</i>	<i>Copy of appeal No.5 of 2009.</i>
<i>(10)</i>	<i>Ex.DJ&DK</i>	<i>Copy of stay application & affidavit.</i>
<i>(11)</i>	<i>Ex.DL</i>	<i>Copy of bail application of Hira Lal & others</i>

(12)	<i>Ex.DM</i>	<i>Copy of objections filed by Satto Devi.</i>
(13)	<i>Ex.DN</i>	<i>Copy of Execution petition No.55/21.10.2008.</i>
(14)	<i>Ex.DO</i>	<i>Copy of affidavit of Satto</i>
(15)	<i>Ex.DP</i>	<i>Copy of vakalatnama</i>
(16)	<i>Ex.DQ</i>	<i>Copy of stay application.</i>
(17)	<i>Ex.DR</i>	<i>Copy of affidavit along with stay application.</i>
(18)	<i>Ex.DS</i>	<i>Copy of pleadings in CS No.19/23.9.08/2.6.2011.</i>
(19)	<i>Ex.DT</i>	<i>Copy of affidavit of Satto.</i>
(20)	<i>Ex.DU</i>	<i>Copy of statement of Satto dated 08.03.1999.</i>
(21)	<i>Ex.DV</i>	<i>Copy of affidavit of Satto.</i>
(22)	<i>Ex.DW</i>	<i>Copy of Expert Report.</i>
(23)	<i>Ex.DX</i>	<i>Copy of statement of Satto dated 8.9.09 & 21.12.09.</i>
(24)	<i>Ex.DY</i>	<i>Copy of affidavit of Satto.</i>
(25)	<i>Ex.DZ</i>	<i>Copy of application moved before Canara Bank.</i>
(26)	<i>Ex.DZ1</i>	<i>Copy of statement of HariKishan.</i>
(27)	<i>Ex.DZ2</i>	<i>Copy of complaint dated 09.12.2009.</i>
(28)	<i>Ex.DZ3&DZ4</i>	<i>Copy of affidavit & statement of Vidyawati.</i>
(29)	<i>Ex.DZ5&DZ6</i>	<i>Copy of affidavit & statement of Kela Devi.</i>

After hearing the arguments, the trial Court vide its judgment dated 06.01.2017 held that the prosecution has failed to prove its case beyond shadow of reasonable doubt and acquitted all the accused of the charge framed against them.

The State felt aggrieved by such judgment of acquittal and challenged it by way of filing the appeal, which was dismissed by lower

Appellate Court vide judgment dated 21.10.2017 passed by Additional Sessions Judge, Faridabad.

Feeling aggrieved, the complainant has approached this Court by way of filing the present revision petition, impleading Hira Lal son of Devi Lal, Dungar Singh son of Devi Lal, Kali Charan son of Devi Lal, Kundan Singh son of Devi Lal, as respondents no. 2 to 5, as well as State of Haryana as respondent No. 1.

I have heard learned counsel for the petitioner and perused the paper-book.

It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge.

Hon'ble Apex Court in ***Johar and others v. M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, has observed as under:-

"17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under section 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal."

The factum of powers of the revisional court dealing with the revision against acquittal being extremely limited was reiterated by the Hon'ble Supreme Court in the case of ***K. Ramachandran v. V.N. Rajan&Anr. 2010(5) RCR (Criminal) 237***, wherein it was held as under:-

"This question has been considered in the celebrated judgment of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2

SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

- "(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- 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."*

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to reappreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial."

*In the case of **Hydru v. State of Kerala, {2004 (13) SCC 374},***

the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

In the case of ***Satyajit Banerjee v. State of West Bengal, 2005(1) RCR (Crl.) 723***, the Apex Court laid down that revisional jurisdiction, at the instance of the complainant has to be exercised by the High Court only in very exceptional cases, where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.

Considering the case in hand, the learned trial Court, after appreciating the entire evidence on record, acquitted respondents No.2 to 5, vide judgment dated 06.01.2017.

The reasons mentioned for acquitting the respondents No. 2 to

5-accused can be summarized as follows:

(1) In the FIR lodged by complainant - Satto Devi, it was stated that her brothers have got transferred the property belonging to her by making forged signatures and they have also fabricated a forged Will. On the other hand, while deposing in her evidence, the complainant (PW2), changed her version that her brothers had got transferred the land belonging to her by impersonating some other woman in her place and they have also taken compensation in this regard.

After appreciating the evidence, Trial Court returned the finding that neither the complainant nor the prosecution has succeeded to prove that the accused persons presented some other woman in place of the complainant in the court and got transferred the land belonging to complainant in their names and also got released the compensation amount.

(2) PW11 ACP Jitesh Kumar in his cross examination has deposed that the accused persons presented some woman in place of the complainant and got transferred the land belonging to the complainant in their names. He further deposed that during investigation this fact had come to his knowledge and when he tried to find out that woman, the accused persons confessed that they have presented some woman by giving her Rs.2000/- and they does not know who was that woman.

Trial Court held that perusal of the case file shows that neither the alleged lady was arrested by the police nor any effort was made in this regard. If the alleged lady would have been arrested by the police and have presented before the court as an accused and her signatures would have been taken and sent to FSL and the reports have obtained mentioning that the signatures on the alleged documents belonged to that lady, the

situation would be different but in the absence of that lady as an accused, it cannot be admitted that the accused persons presented some other lady in the court in place of the complainant.

- (3) *Complainant herself admitted in her cross-examination that her father executed a Will in favour of her brothers in the year 1994 and she came to know about the compensation about 3-4 years ago when she visited her parental house and this fact was disclosed to her by some lady but she does not know that lady.*

Trial Court held that when the land was already given by the father in favour of his sons through a registered Will, what was the occasion for the sons to present some lady on behalf of the complainant.

- (4) *Complainant deposed that she does not know whether her aunt (mother's sister) Sheela Devi transferred her share in the name of her brothers. She further deposed that she also does not know whether her sister Vidya Devi also transferred her share in favour of her brothers.*

Trial court held that it is not appropriate to convict the accused persons merely on the statement of complainant.

- (5) *It has come in evidence that complainant filed a suit for declaration against the accused persons challenging the Will which was dismissed by the trial court and appeal against the judgment was also dismissed by the Ld. Appellate court.*

- (6) *The prosecution relied upon the report of Handwriting expert, however the person who prepared the said report has not been examined by the prosecution and he was given up being unnecessary.*

However, this witness appeared as DW2 and after considering the evidence of DW2, Trial Court came to the conclusion that the said report

was not sufficient to prove that the signatures on the alleged documents do not pertain to the complainant and they are done by some other person. It was further held that merely on the basis of an expert opinion, it is not safe to convict any person.

(7) Except the handwriting expert report and the oral testimony of the complainant, no material evidence has been produced by the prosecution to prove the guilt of the accused persons beyond reasonable doubt.

(8) All the witnesses examined by the prosecution are official witnesses who are interested in success of the prosecution case and no independent witness was included at the time of arrest of the accused persons, recording of disclosure statement and at the time of alleged recovery. No explanation has been given by the prosecution for non-joining of independent witness. This makes the prosecution case doubtful.

Further, the Lower Appellate Court has again re-examined and appreciated the evidence on record and dismissed the appeal filed by State of Haryana vide judgment dated 21.10.2017, by holding as under:-

“10. I am fully convinced with the submissions made by the learned counsel for the respondents/accused persons. The hand writing expert of FSL is not covered under clause (a) to (g) of Sub-section (4) of Section 293 Cr.P.C. to make the said FSL report prima facie admissible. Thus, non-examination of FSL expert and not giving an opportunity to the respondents-accused to falsify the said report, the said report cannot be considered to prejudice their interest. Complainant has not even examined the holding counsel of case titled as Jeevan Singh Versus State of Haryana case No.152/1998 to prove that she has never attended the court as alleged by her. Except the self serving statement of the complainant, there is no corroborative evidence in this

regard. Moreover, the present complainant Smt. Satto filed a civil suit No.19 dated 23.09.2008 before learned Civil Judge, Faridabad for declaring the Will dated 10.04.1995 executed by Devi Lal, as null and void, however, complainant lost the said suit vide judgment dated 27.10.2012 Ex.DA1. She filed an appeal No.44 dated 23.11.2012 against the said judgment which was also dismissed by Appellate Court on 03.08.2016 vide Ex.DA. The Will dated 10.04.1995 Ex.DB is a registered document having photo of Devi Lal along with his thumb impressions. The said Will is also witnessed by the two witnesses. There is nothing on record to doubt the said Will. Thus, even if it is presumed that Satto never attended the LAC Court to suffer the statement in favour of the accused persons, even then the question of cheating does not arise in view of the Will Ex.DB, whereby Devi Lal expressed his desire for transfer of his ownership rights in favour of his sons only i.e. respondents/accused persons. However, I cannot ignore the fact that the prosecution has to establish its case beyond reasonable doubt, but prosecution failed to discharge the said burden.

*11. Accordingly, I am of the considered view that the respondents/accused persons were rightly acquitted by learned Trial Magistrate, and hence, present criminal appeal is hereby dismissed being devoid of any merit. Accordingly, the impugned judgment is hereby maintained and the present criminal appeal is hereby **dismissed** being devoid of any merits. Bail bonds stands discharged...”*

A perusal of the findings recorded by trial Court and lower Appellate Court, would manifest that the allegations against Hira Lal son of Devi Lal, Dungar Singh son of Devi Lal, Kali Charan son of Devi Lal, Kundan Singh son of Devi Lal regarding the offence of cheating, forgery and fabrication of documents etc., as per case of the prosecution, are not

established against them and I am in agreement with the findings returned by the trial Court and as upheld by Lower Appellate Court.

Keeping in view the legal position as indicated in foregoing paras, I do not find any illegality or infirmity with the impugned judgment(s)/order(s), apparent on the face of the same, which may call for any interference by this Court, while exercising its revisional jurisdiction. There is nothing on the record to show that the Courts below have exceeded their jurisdiction or refused to exercise jurisdiction, while passing the impugned judgment(s)/order(s). The impugned judgment(s)/order(s) are certainly not perverse or having been passed in violation of settled principles of criminal jurisprudence. No procedural irregularity or illegality has been pointed out. Impugned judgment(s)/order(s) are based upon proper appraisal and appreciation of evidence and as per law.

Therefore, there is no merit in the present criminal revision petition and the same stands dismissed accordingly.

All pending application/s, if any, shall stand closed.

March 16, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No