

2023:PHHC:069842

CRM-30830-2018
CRR-2928-2018 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-30830-2018 in
CRR-2928-2018 (O&M)
Date of Decision: 15.05.2023

Balraj

... Petitioner

Versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Sant Lal Barwala, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J.

CRM-30830-2018

This is an application under Section 5 of the Limitation Act seeking condonation of delay of 149 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed. The delay of 149 days in filing the present revision petition is condoned.

CRM-30830-2018
CRR-2928-2018 (O & M)

::2::

CRR-2928-2018

The present revision petition has been filed impugning the judgment dated 15.12.2017 passed by the Sessions Judge, Hisar whereby the appeal filed against the judgment of acquittal dated 21.04.2015 passed by the Judicial Magistrate Ist Class, Hisar has been upheld.

2 The gist of the prosecution story as per the final report under Section 173 Cr.PC. is that on 7.1.2011, complainant Sh. Balraj Singh moved a complaint with the police regarding taking legal action against the accused/respondents (hereinafter known as the accused) alleging therein that he had 26½ acre land in village Harita and the accused were cultivating the said land since the last 27 years on batia tihai. The said land was being cultivated by Sh. Ran Singh but after his demise, his sons and grandsons had been cultivating the same. The accused were only to do the work of sowing of crops but since the preceding 2-2½ years, they had been illegally cutting and selling the Shisham trees and had already sold 50-60 trees the price of which was more than Rs. 30,000/- each. Apart from that, they had also sold kikar trees and the cost of one kikar tree was about Rs. 8000/-. He further submitted that the accused persons were also doing the business of selling soil, whereas they had no right on the trees and plants and they were entitled only to the share of the crops. While he had gone to the fields about 2-2 ½ years ago, he found the accused persons cutting the trees on the spot. He prayed for taking legal action against the accused persons and for recovering compensation.

CRM-30830-2018
CRR-2928-2018 (O & M)

::3::

On the basis of the application/complaint, the instant case was registered. The matter was duly investigated. During investigation, the accused were arrested and the recovery of kikar wood and Shisham was effected and were taken into police possession. After completion of investigation, the challan was presented before the Court for trial of the case.

3. Copies of challan and other documents were supplied to the accused as envisaged under section 207 Cr. P. C.

4. On finding a prima facie case against the accused, they were accordingly charged under Section 379 of Indian Penal Code by the then ACJM. Hisar vide order dated 9.11.2011, to which the accused persons did not plead guilty and claimed trial.

5. In order to bring home the guilt of the accused, the prosecution examined 14 witnesses.

ASI Subhash Chander-PWI, deposed about the disclosure statements of the accused persons.

PW2 Surender Singh deposed regarding taking of three dumpers of mud from the field. He stated that thereafter, his labourers refused to take mud from there. On this, he was declared hostile and was allowed to be cross-examined by APP. During cross-examination, he denied the statement Ex.PWI/A made before the police. He denied the suggestion that he was deposing falsely in collusion with the accused to save them.

Sh. Sarjeet was examined as PW3, Sh. Sube Singh as PW4, Guddu as PW5, Sh. Tota Ram as PW6 and Sh. Prem as PW7, who all deposed that they

CRM-30830-2018
CRR-2928-2018 (O & M)

::4::

did not know anything about this case. On this, they were also declared hostile and were allowed to be cross-examined by learned APP. They also denied the statements made before the police and denied the suggestion that they were deposing falsely in collusion with accused persons to save them.

ASI Ishwar Singh was examined as PW8, who deposed about the arrest and disclosure statements of accused.

PW9 Inspector Virender deposed that after completion of investigation, the challan was prepared and produced by him in the Court. He identified his signatures on it.

PW10 Balraj (complainant) deposed about the facts of the case and proved the complaint Ex.PW10/C. He identified his signatures on recovery memo Ex.PW10/E and disclosure statement of accused Ravinder Ex.PW10/F.

PW-11 Sant Parkash who was a member of the investigating agency deposed about the disclosure statements of the accused persons.

PW12 Sh. Dalbir Singh who was also a member of the investigating agency deposed similarly as PW-11.

ASI Balwan Singh was examined as PW13, who proved the formal FIR Ex PW13/B and endorsement thereon Ex.PW13/C.

SI Gurmeet Singh was examined as PW14, who was the Investigating Officer of this case and deposed about the steps taken during investigation. He proved the documents ie application Ex PW10/C, formal FIR Ex.PW13/B, endorsement Ex.PW13/C, site plan Ex.PW/14/A, disclosure statement of accused Narender as Ex PW8/A, disclosure statement of accused

CRM-30830-2018
CRR-2928-2018 (O & M)

::5::

Pardeep Ex.PW8/B, disclosure statement of accused Ramesh Ex PW8/C and demarcation Ex. PW8/D.

Thereafter, the evidence of the prosecution was closed vide order dated 16.3.2015.

6. Statements of the accused persons were recorded under Section 313 Cr.P.C. wherein, they denied all the allegations of the prosecution and pleaded false implication. However, no defence evidence was led by the accused and the same was closed by their separate statements dated 20.4.2015.

7. Based on the evidence led, the accused were acquitted by the Court of the Judicial Magistrate Ist Class, Hisar vide judgment dated 21.04.2015.

8. The State of Haryana went in appeal and vide judgment dated 15.12.2017, the said appeal came to be dismissed by the Court of the Sessions Judge, Hisar.

9. The present revision at the instance of the petitioner-complainant had been filed against the aforementioned judgments of the Appellate Court and the Trial Court.

10. The learned counsel for the petitioner-complainant contends that there was ample evidence on the record available against the accused to convict them. The recoveries of Kikkar and Shisham trees had been effected from them and as the said trees had been removed without the consent of the landlord, the offence of theft was clearly established. The Trial Court had failed to appreciate the evidence of the material prosecution witnesses in its proper perspective. As

CRM-30830-2018
CRR-2928-2018 (O & M)

::6::

the offence had been well-established, the respondent-accused were liable to be convicted for having committed the offence in question.

11. I have heard the learned counsel for the petitioner.

12. In the instant case, PW-2 to PW-7 have turned hostile. Therefore, the identity of the accused could not be established in accordance with law. The other prosecution witnesses were official in nature and their depositions are with respect to the various facets of the investigation. No independent witness was joined at the time of arrest and recovery. The case property had also not been produced in the Court. In fact, the registration of the present FIR seems to be an outcome of a civil dispute between the complainant on the one hand and the accused on the other.

13. In view of the above, I find no reason to interfere with the well-reasoned judgments of the Trial Court dated 21.04.2015 and the Appellate Court dated 15.12.2017. Therefore, the present revision petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 15, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No