

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

CRR-1271-2021

Date of Decision: 20.12.2023

Smt. Kaushalya Devi

.....Petitioner

Versus

Jagbir and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Lalit Pardhan, Advocate
for the petitioner

Harpreet Singh Brar, J. (Oral)

1. The present revision petition is preferred against the judgment dated 05.02.2021 passed by learned Additional Sessions Judge, Jhajjar vide which the judgment of acquittal dated 13.09.2018 passed by learned Judicial Magistrate Ist Class, Jhajjar in FIR No. 198 dated 20.03.2014 under Section 186, 353, 506 of the IPC registered at Police Station Jhajjar, has been upheld.

2. Briefly, the facts are that on 14.03.2014 at about 11:00 AM, respondent no. 2-Ranbir @ Sethi son of Kashi Ram came to the office of the District Collector and stated that the petitioner is harassing them by not allocating the *Nazul* land of village Bid Sunarwala in their names. He threatened to abduct the petitioner and her daughter if she does not get the same allotted to them through the District Collector. The petitioner informed him that the allocation cannot be done till whole of the rent is not deposited and that the proceedings of allotment is initiated by the Tehsildar. Thereafter, respondent no. 2 offered bribe to the petitioner which she denied leading to respondent no. 2 threatening to abduct her or

get her transferred. On 15.03.2014, the petitioner received a call from mobile no.

9991043261 and the caller threatened her and called her “*chamari, dedhni and kamini*” and questioned why is she not doing their bidding while disclosing his identity as Narvinder Mor- respondent no. 3. He further threatened to get her thrown out of the State through the Chief Minister and planting a false news in the newspaper that she is demanding Rs. 5,00,000/- as bribe for allotment of the said land. He also threatened to give an affidavit against her and abduct her daughter.

3. The petitioner filed a complaint with Police Station Jhajjar on 20.03.2014 regarding this incident, based on which a formal FIR was registered. On finding a *prima facie* case for offences punishable under Sections 353, 186, 506 read with 34 of the IPC, charges were framed against the respondent no. 1 and 2 vide order dated 12.11.2014, to which they pleaded not guilty and claimed trial. On appearance of respondent no. 3, charges under Sections 353, 186, 506 read with 34 of the IPC were framed against him vide order dated 10.07.2017.

4. In order to prove its case, the prosecution examined as many as 7 witnesses. The accused did not lead any evidence in their defence. Subsequently, the respondents-accused were acquitted by the trial Court vide judgment dated 13.09.2018. Aggrieved by the judgment of conviction, the petitioner approached the learned lower Appellate Court, where her appeal was dismissed vide judgment dated 05.02.2021.

5. Learned counsel for the petitioner assails the impugned judgment on the ground that the learned lower Appellate Court has failed to consider that the Courts are required to consider the quality of evidence and not the quantity. He further argues that the investigation of the instant case was tainted as the Investigating Officer was in connivance with the respondents-accused. The production of phone call details as well as the phone call made by the respondents-accused to the petitioner completes the link evidence and conclusively proves the

appreciate the fact that the petitioner was threatened in connection with discharge of her duties as an employee of the District Revenue Authority branch of the office of District Collector, Jhajjar. The report filed by the police under Section 173 of the Cr.P.C. clearly states that the arrest of respondent no.3 would disturb the peace in the area. This itself suggests that not only respondent no. 3 is capable of threatening the petitioner but also that the police is in cahoots with the accused.

6. Moreover, the factum of the threatening phone call has been duly proved by the call details. It has been established that the mobile phone from which the call was made belonged to respondent no. 1. Further, the caller had disclosed his name as Navinder Mor and the petitioner also recognized his voice, having met him several times before the call. The investigating agency also failed to collect evidence with regard to threats about allotment of *Nazul* land. The incident is also proved by PW5 Sat Narain, a public person, who was present at the office of the District Collector at the time. Further, the discrepancies between the testimonies of PW1- petitioner and PW5- Sat Narain are minor in nature which cannot prove to be fatal to the prosecution case. The learned trial Court fell into error by not framing charges under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter 'SC/ST Act') as the petitioner is a lady that belongs to the Scheduled Caste and was threatened based on her caste identity.

7. Having heard the learned counsel for the petitioner and after perusing the record of the case with their able assistance, it transpires that the petitioner herself did not want to place her mobile number on record where she received the threatening phone call. Further, allegedly the phone call was made from the mobile number 9991043261 by respondent no. 3, however the same is registered under the name of respondent no. 1- Jagbir. A perusal of the complaint indicates that it was respondent no. 2-Ranbir who threatened the petitioner at the office of the District

respondent no. 1-Jagbir and not respondent no. 2-Ranbir. Hence, the contents of the complaint remain uncorroborated. The link evidence necessary to prove the prosecution case is completely missing and in the facts and circumstances, it would be reasonable to draw an adverse inference against the petitioner for withholding evidence (her mobile number, call records of her number). As such, the petitioner has no locus to claim defective investigation.

8. Furthermore, while the petitioner stated that she could identify the voice of respondent no. 3-Navinder Mor, she failed to move an application for taking a voice sample of the said accused. No hard copy or data of the alleged threatening phone call was placed on record. Therefore, there is no reason to believe the prosecution case as narrated by the petitioner. Finally, it is trite law that a judgment of acquittal cannot be overturned on the grounds of non-framing of a charge when no such grievance was pleaded by the complainant. The alleged caste based remarks were made by respondent no. 3, through mobile call, as such, the ingredient of 'public view' is not satisfied required to attract the provisions of the SC/ST Act.

9. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court

No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

10. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned trial Court or the learned lower Appellate Court which warrants interference by this Court. As such, there is no merit in the present present petition and the same is dismissed.

20.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No