

2023:PHHC:133991

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CRR-1960-2019 (O&M)
Date of Decision: 13.10.2023

Kulwinder Singh @ Soni

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the judgment dated 08.05.2019 passed by the Additional Sessions Judge, Ludhiana and the judgment dated 20.11.2015 passed by the Judicial Magistrate 1st Class, Khanna, whereby, the respondents No. 2 and 3 have been ordered to be acquitted of the charge.

2. As per the case of the prosecution, on 14.06.2013, ASI Tilak Raj alongwith other police officials was present on patrolling on T.Point, Jaspalon and in the meantime, Kulwinder Singh @ Soni appeared and stated that he was Panch of village Jatana. He stated that the house of Ajit Singh, his uncle was situated opposite to his house and was within a Lal Lakir. He had purchased the same from Ajit Singh and was in possession of the said house for the last 10 years.

He had kept certain house hold articles, viz., drums of wheat, drums of diesel and other articles in the said house. At about 08.00 p.m. on 03.06.2013, he returned from Bathinda and saw that the door of the house of his uncle was open and when he went inside, he saw that the wall situated between the house of Ajit Singh and Sukhwant was broken by Sukhwant Singh and his wife Daljit Kaur, respondents No. 2 and 3 and they were sitting in the house of Ajit Singh. On seeing them, they left the house of Ajit Singh and went inside their house through the broken wall. Many persons had gathered there and the present petitioner got the FIR registered against the respondents No. 2 and 3.

3. Learned counsel for the petitioner vehemently argued that both the lower Courts had completely ignored the evidence on the file. The petitioner had appeared himself as PW1 and also proved his statement Ex.P1. Similarly, Karamjit Singh was examined as PW2, who corroborated the case of complainant also. Even, sufficient evidence was led before the trial Court to show that the respondents had illegally trespassed in the house of the petitioner and had taken illegal possession of the plot. Apart from that, there was sufficient evidence to show that the petitioner had become owner of the house after Ajit Singh and the respondents No. 2 and 3 had no right to enter the said house.

3. I have heard learned counsel for the petitioner and perused the record.

4. In the present case, the main charge against the respondents No. 2 and 3 was that on 03.06.2013, they had committed house trespass after breaking the wall of the house of Ajit Singh, which was purchased by the petitioner. To prove the case of the prosecution, PW1 Kulwinder Singh was examined, who claimed ownership over the house in question, which was trespassed. Apart from that, it was also alleged that petitioner had purchased the house from its previous owner Ajit Singh. However, the trial Court has rightly observed that the petitioner could not place on record any evidence to show that the petitioner/complainant was the owner in possession of the house in question and he had actually purchased the said house from Ajit Singh. No documentary evidence was proved to show that the ownership and possession vested with either Ajit Singh or the present petitioner. Still further, the petitioner was examined as PW1 and he clearly admitted in his cross-examination that during his lifetime, Ajit Singh had moved a complaint before the police against him, by alleging that he wanted to grab the house in question. Even, he admitted that Ajit Singh had sold the house in question to Sukhwant Singh, respondent No. 2/accused. Thus, it is apparent that the house had already been sold to respondent No. 2. Moreover, admittedly, Kulwinder Singh and Daljit Kaur were not present at the

time of the occurrence. In fact, Daljit Kaur was the main witness to show the ownership and possession over the property, but the said witness was not produced by the prosecution, for the reasons best known to them. Since, neither the possession nor the ownership of the house in question was with the petitioner, the respondents have been rightly acquitted by both the Courts. Even otherwise, I have gone through the impugned judgments dated 08.05.2019 dated 20.11.2015 passed by the Courts below and found no infirmity, illegality or perversity.

5. It has been held by the Hon'ble Supreme Court in the matter of **"Bhaskarrao and others Vs. State of Maharashtra"**, 2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228 as follows:-

*"14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either

unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In Ramesh Babulal Doshi v. State of Gujarat, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

6. In view of the above discussion and law laid down by the Hon'ble Supreme Court, the present petition is ordered to be dismissed.

7. All pending applications, if any, are disposed off, accordingly.

13.10.2023

(N.S.SHEKHAWAT)

amit rana

JUDGE

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