

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

CRR No.77 of 2019

Date of decision : 09.08.2023

Pushpa Malhotra

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J.

Complainant is in revision against the judgment dated 6th of September, 2018 passed by Additional Sessions Judge, Barnala affirming the judgment of acquittal dated 28th November, 2014 passed by JMIC, Barnala acquitting the respondents in FIR No.20 dated 9th of January, 2008 registered for the offences punishable under Section 380, 451 IPC, at Police Station City Barnala.

2. Law was set into motion on the complaint made by Pushpa Malhotra wife of OP Malhotra claiming that they are six siblings. Their father late Sh. Ganga Bisham executed a Will in the year 1988 whereby he bequeathed one property bearing No.442 in favour of his four daughters including the complainant. The Will was executed in supersession of earlier Will dated 15th of July, 1985. The keys of the shop were kept in custody of her younger sister Santosh Kumari. The accused persons have stolen the

keys of the shop which led to registration of the present FIR.

3 Trial Court after analyzing the evidence threadbare acquitted the respondents.

4. Complainant stepped into witness box as PW1. One of the sister Kailash Kumari appeared as PW3 and Santosh Kumari appeared as PW-4. Admittedly, the keys are claimed to have been stolen in the month of August, 2007 and the FIR came into being only in the month of January, 2008. Trial Court while acquitting the accused observed as under :

“11. A careful perusal of the above evidence on record shows that the witnesses of PW1 and PW3 regarding the incident is not admissible being heresay in nature. The only eye witness in this case is PW4. The crediability of this witness is again doubtful. She does not recollect the date of time of incident. Although, in her chief examination, she stated that incident took place in August, 2007. Again she has revealed that she had given information to the police after two days of the incident which fact is against the record as complaint in the present case was moved by PW1 only. In the present case, which is of theft no recovery was ever effected from the accused and this fact gains importance in the backdrop that the eye witness has not established through evidence the material ingredients of offence of theft. In complaint, the allegations is made against four persons whereas in her evidence PW4 who is the main witness in the case, has named only two persons i.e. accused nos. 1 and 2, so, again on this account the crediability of this witness becomes doubtful.

12. In the present case, there is delay of about 4 months in lodging of FIR which remains unexplained. The delay gains more importance when viewed in the light of evidence brought on record by the accused. Although Ex.D4 and Ex.D5 have been objected to on the ground non registration but still they can be used for collateral purposes to show possession of accused no. 1 on the shop since 15.7.2000. Ex.DW2/A is copy of plaint in suit no. 1015 of

24.9.2007 for permanent injunction filed by the accused no.1 against complainant and his other sisters. So, the extent of delay in lodging FIR when viewed from the civil dispute existing between the parties regarding the same very shops whose keys are subject matter of theft in the present case puts the entire genesis of prosecution story in doubt.”

5. Ld. Appellate Court affirmed the aforesaid findings after re-appreciating the evidence observing as under :

22. To prove a criminal case, it was imperative on the part of the prosecution that possession of the shop in question was taken from Piara Lal, previous tenant by Pw1 Pushpa Malhotra and handed over the management of said shop to Pw3 Krishna Kumari. Even no record regarding change of electric meter is proved on record by the prosecution. Initially police found the facts of complaint Pw1/A filed by Pw1 Pushpa Malhtora to be false one and recommended cancellation report, but again after the second inquiry, police presented the challan.

23. From the evidence led by the accused in defence, it seems that dispute between the complainant and accused being daughters and sons of Ganga Bishan has in fact a civil dispute regarding the Will executed by their father regarding which Om Parkash has already filed civil suit for permanent injunction, which is earlier to the filing of present complaint and proved from the copy of plaint dated 22.09.2007 ie earlier to giving of complaint, which was given to the police on 25.11.2007. Suit was filed against Santosh Kumari, Pushpa Rani, Kailash Rani, Neelam Kumari, Krishna Kumari and Krishan Kumar seeking relief of permanent injunction regarding the shop, which is prior in time to the present complaint. Further the accused have proved family settlement dated 15.08.2000 Ex.D4, which is also prior in time to present complaint Ex.Pw1/A, which bears signatures of Krishna Kumari and Santosh Kumar and vide this family settlement, possession of the shop has been delivered to Om Parkash by admitting the Will dated 15.03.1985 by all the sisters and further it is mentioned in Ex.D4, that Om Parkash

has paid Rs.15000/- to each of sisters and told of 4 tola each to each sister. The signatures of Krishna Kumari and Santosh Kumari are proved by accused through the testimony of Dw3 Dr. Inderjit Singh, handwriting and finger prints expert.

6. I have heard counsel for the petitioner and have gone through records of the case.

7. Law w.r.t. exercise of revisional jurisdiction of this Court already stands settled by the Apex Court in **Thankappan Nadar vs. Gopala Krishnan (2002) 9 SCC 393**, wherein it has been held as under :

“6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In **Akalu Ahir and Others v. Ramdeo Ram,(1973) 2 SCC 583** this Court has (in SCC pp.587-88, para 8) observed thus:

"This Court however, by way of illustration, indicated the following categories of cases which 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 the acquittal."

The Court further observed: (SCC p.588, para 10)

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.

(Emphasis added)"

8. In **Raj Kumar vs. State of H.P., (2008) 11 SCC 76**, Apex Court held that :

"7. In Duli Chand v. Delhi Administration, (AIR 1975 Supreme Court 1960), the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows :

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence

established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere."

8. **In State of Orissa v. Nakula Sahu and Ors., (AIR 1979 Supreme Court 663)** it was held that the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In **State of Kerala v. Puttamana Illath Jathavedan Namboodiri, 1999(1) RCR (Criminal) 808 : (1999 (2) SCC 452)** it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

9. We find that the trial Court and the Revisional Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction."

9. Further, Apex Court in **State Rep. By The Drugs Inspector vs. Manimaran (2019) 13 SCC 670** held as under :

15.....When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while

arriving at that finding. As held in **State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452**, ordinarily it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.

10. This Court finds no reason to interfere in the present revision petition as reappraising the evidence is beyond revisional jurisdiction.
11. Counsel for the petitioner has not been able to make out a case to show any legal infirmity in the judgment passed by the Courts below. Resultantly, the present revision petition is dismissed.

August 09, 2023		(PANKAJ JAIN)
Dpr		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No