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(235) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 13.03.2023

AMRITPAL SINGH

... Petitioner

Versus

HARNEK SINGH & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. A.S. Dhindsa, Advocate for
Mr. K.S. Chahal, Advocate
for the petitioner.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the judgment dated 10.09.2018 passed by the Additional Sessions Judge, SAS Nagar, Mohali, whereby the appeal filed against the judgment of acquittal dated 19.07.2017 of the accused/respondents passed by the Judicial Magistrate, 1st Class, SAS Nagar, Mohali, has been upheld.

2. The facts in brief are that the case was registered against the accused/respondents on the basis of a written complaint moved by the complainant-Amritpal Singh son of Janak Singh to the SHO, Police Station Balongi. The complainant stated that he was resident of village Behlolpur, Tehsil and District SAS Nagar, Mohali and he had one house in the village Abadi. He also furnished the details of the sale deed and annexed the site plan to the complaint. Vide registered sale deed dated 21.03.2008, he had purchased the land in the year 2008 and had raised a boundary wall on two sides. On 05.08.2015, when he along with his father Janak Singh went to his village to met Bhagat Ram then he saw that bricks of his wall were scattered there. He

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made an inquiry. Then some women of the locality told him that Harnek Singh, Charanjit Kaur and their son Baljinder Singh had removed bricks from the wall. Thereafter, again in the evening on the same day about 06.00 PM the accused/respondents again removed 5 layers of bricks and scattered them. They also stole the said bricks. When he tried to stop them, then they threatened him that they would kill him. He further stated that at the time Gurnam Singh son of Gurnek Singh and Mohinder Pal Singh son of Jeet Ram were present there. He further stated that a case with regard to the ownership of the property filed by Mohinder Singh and Baljinder Singh at the Kharar Courts was pending. On 24.09.2011, the Additional Sessions Judge, SAS Nagar had passed an order and on the basis of the said order both the above-named persons had got the registry in their favour. Thereafter, Baljinder Singh son of Harnek Singh had filed an appeal against the said order and the said order was set aside vide order dated 12.03.2014. The accused persons had no link with the property owned by him (complainant). Even then, after seven years they had demolished his wall. He prayed that as the above said persons had demolished his wall and had also stolen bricks, so action may be taken against them. On the basis of the complaint made, the FIR was registered against the accused. After the registration of the FIR, the rough site plan of the place of occurrence was prepared. Statements of witnesses were recorded under Section 161 Cr.P.C. The accused were arrested. After completion of investigation, the report under Section 173 Cr.P.C. was prepared and was presented in the Court against the accused.

3. On the presentation of the challan copies of the challan along with other relevant documents were supplied to the accused free of cost as envisaged under Section 207 Criminal Procedure Code.

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4. After going through the file and hearing both the parties, a *prima facie* case was made out against the accused under Section 447, 411, 427, 392, 506 read with Section 34 IPC. Accordingly, charge was framed against the accused/respondents to which the accused/respondents pleaded not guilty and claimed Trial.

5. In order to substantiate its case, the prosecution examined PW1-Janak, PW2-Amrit Pal Singh, PW3-ASI Dilbagh Singh, PW4-SI Charanjit Singh, PW5-Harwinder Pal Singh and PW6-Gurpreet Singh, Jr. Assistant. Thereafter, the prosecution evidence was closed vide separate statement on 26.05.2017.

6. After the evidence of the prosecution, the statement of the accused/respondents was recorded under Section 313 Cr.P.C., in which the accused/respondents denied all the allegations of the prosecution and stated that they had been falsely implicated in this case and pleaded their innocence. They opted to lead defence evidence but closed the same without leading any evidence in defence.

7. Based on the evidence led, the respondents/accused were acquitted by the Court of the Judicial Magistrate, 1st Class, SAS Nagar, Mohali vide judgment dated 19.07.2017. Against the said judgment of acquittal, the petitioner/complainant preferred an appeal before the Court of the Additional Sessions Judge, SAS Nagar, Mohali and the same came to be dismissed vide judgment dated 10.09.2018.

It is this order which is impugned in the present petition.

8. The learned counsel for the petitioner contends that the case of the petitioner/complainant was fully established from the statement of PW1-Janak

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Singh, PW5-Harwinder Pal Singh and his own statement as PW2. Stolen bricks were recovered from the possession of the respondents and they never claimed ownership of the same. Therefore, the case of the petitioner/complainant was well-established. In fact, the Courts below had not properly appreciated the evidence and had misread the same while acquitting the accused/respondents.

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

10. A perusal of the depositions of PW1-Janak Singh and PW2-Amrit Pal Singh (petitioner/complainant) would reveal that they are not eyewitnesses to the occurrence. As per their testimonies, PW5-Harwinder Pal Singh was an eyewitness. However, there is a contradiction between the statement of PW5-Harwinder Pal Singh and the complainant PW1-Amrit Pal Singh regarding the presence of Harwinder Pal Singh at the spot on the date of the occurrence. It appears that the instant FIR is an outcome of a pending civil litigation between the parties. There is also a contradiction regarding whether the wall in question had ever been constructed. There is no specific identification mark on the bricks stated to have been recovered from the respondent/accused. The accused therefore cannot be held guilty on mere conjectures and surmises and on presumptions.

11. In view of the aforementioned discussion, I find no reason to interfere with the well-reasoned judgments of the Trial Court and the Lower Appellate Court. Hence this revision petition is dismissed.

(JASJIT SINGH BEDI)
JUDGE

13.03.2023

JITESH

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