

228.

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

CRM-A-2994-2019 (O&M)
Date of decision: 31.07.2023

Mahavir Singh

... Applicant

VS

Rajender and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kartar Singh Malik-I, Advocate for the applicant.

ARUN MONGA, J. (ORAL)

CRM-40951-2019

For the reasons stated in application, same is allowed. Delay of 636 days in filing the application seeking leave to appeal is condoned, subject to all just exceptions.

CRM-40952-2019

Allowed, as prayed for.

CRM-A-2994-2019

Present application has been filed under Section 378(4) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') seeking leave to appeal against the judgment dated 19.01.2018 passed by learned Additional Chief Judicial Magistrate, Panipat whereby the complaint filed by the applicant against the respondents-accused for commission of offences punishable under Sections 147, 452, 427, 506 of IPC was dismissed. The appeal filed

against the judgment before the Sessions Judge, Panipat, was also dismissed vide order dated 05.11.2019 being not maintainable.

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:-

“In brief, the facts of the complainant’s case are that he is resident of Village Sewha, District Panipat. The accused no.1 Rajender is his neighbor. The accused Rajender has constructed his house adjacent to his house. The accused Rajender in his absence raised the construction of his wall on the wall belonging to him. When he objected, then the accused no.1 assured him that he could also place his garter on the said wall. Accordingly, he put his garter on the said wall and completed his house. However, the accused tried to cut the said garter with the gas machine. When he objected to this act, then the accused gave beatings to him. The FIR in this regard was registered against the accused vide FIR No.902 dated 29.10.2012 under Sections 147, 452, 427 and 506 IPC by the police of Police Station, Chandni Bagh, Panipat. However, the police wrongfully and illegally filed cancellation report against the said FIR. Hence, the present protest petition/complaint.”

3. After appreciating the evidence on record, vide impugned judgment dated 19.01.2018, learned Court below dismissed the complaint filed by the applicant-complainant.

4. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against the aforesaid impugned judgment.

5. I have heard learned counsel for the applicant and perused the case file.

6. Learned counsel for the applicant-complainant would contend that the trial Court has wrongly given the benefit of doubt to the accused and acquitted them of the allegations levelled against them. It is argued that the cancellation report had been procured by the respondents in collusion with the police. It is further argued that there is sufficient evidence on record to prove the guilt of the accused. As per the evidence, respondent No.1-

Rajender is not the owner of the plot/house and had made illegal encroachment on the adjoining plot of the complainant.

7. Impugned order dated 19.01.2018 is *inter alia* premised on the following reasoning:-

“18. Admittedly, as per the complainant’s version, the dispute between the complainant and the accused party is going on regarding the wall and the garter. FIR No.902 dated 29.10.2012 under Sections 147/452/427/506 IPC, P.S. Chandni Bagh, Panipat was also registered which was later on cancelled. Thereafter, the protest petition was filed by the complainant in which the accused were summoned to face trial. Now, the complainant is contending that the accused tried to cut the garter of his house and thereby attempted to commit the mischief. To prove his case, the complainant Mahavir Singh has himself stepped into the witness box as CW1 and reiterated the facts and averments mentioned in different paras of the complaint. However, this witness has admitted that he was present in his neighborhood when the accused tried to commit the act and his son informed him about the same but he has failed to examine his son who informed him about the incident and no plausible explanation has been put forth by the complainant for non-examination of this witness who was present on the spot. It was the best evidence to prove the contention of the complainant but no plausible reason has been put forth by the complainant for non-examination of his son. Further, in his cross-examination the complainant has himself admitted that he is stating different thing in his cross and different in his chief and one Rajpal son of Banarsi was present at the time of incident. However, this independent witness has not been examined by the complainant and no plausible explanation has been forthcoming on record for non-examination of this independent witness. Further, the complainant in his protest petition has mentioned that the adjoining house from which attempt was made belonged to Rajender, whereas in his testimony record before the Court he is contending that this house belonged to Jaipal son of Bhikhu and Rajender has illegal connection with him. No explanation is there on record that how when the adjoining house initially belonged to the accused now suddenly it belonged to some other person and how he has connected both these persons no explanation is there on record qua this fact and due to this fact, a serious dent is created in the complainant version, benefit of which goes to the accused. Further, CW2 EHC Ram Kumar has clearly stated that the garter was on the first floor of the house of the complainant, whereas the equipment was recovered from the second floor and it is not possible to cut the garter from second floor to first floor. This witness has also categorically stated that they did not found anybody doing any act when they

reached the spot. CW3 retired SI Suresh Kumar has also supported the complainant's version but this witness has categorically stated that he did not see anybody doing any mischief with the garter or removing the bricks and in the absence of any positive evidence on record to show that accused attempted to cut the garter a serious dent is created in the prosecution/complainant version.

19. Further, there are contradictions in the statements of CW1 complainant Mahavir Singh and CW3 retired SI Suresh Kumar which goes to the root of the case. CW1 complainant Mahavir Singh is contending that the house of Rajender is of two stories, whereas CW3 retired SI Suresh Kumar is stating that house of Rajender is of one storey. Further, the photograph Ex.D1 has been identified by the complainant belonging to him from where allegedly garter was attempted to be cut. The perusal of Ex.D1 shows that there is a roof on the garter whereas, CW3 retired SI Suresh Kumar is stating that garter was lying on a wall and there was no roof over it. He has further stated that he cannot tell the bricks found broken near the garter were for the purpose of removing or placing the garter. In a criminal case, charge is to be proved beyond the shadow of reasonable doubt and in proving the attempt the person should have done an act after the preparation phase is complete. In the present case, there is no positive evidence on record to show that accused were present on the spot and they attempted to cut the garter in collusion with each other. None of the accused has been identified by the police officials and there is no corroboration of the testimony of the complainant by any independent witness who was available on the spot as per his own version, therefore, due to this fact a serious dent is created in the prosecution version, the benefit of which goes to the accused. Hence I extended the benefit of doubt to accused and acquit them from all the allegations leveled against them. Their bail bonds and surety bonds shall remain effective till the filing of the appeal. File be consigned to record room, after due compliance."

8. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

9. It is a settled law as has been held in **C. Antony Vs. K.G. Raghavan Nair**¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is

double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

10. In **Anil Kumar Gupta vs. State of U.P.**², it was held as under:

*“This Court held 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 an order of acquittal unless it comes to the conclusion that the 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. **Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only- reappraise the evidence to arrive at its own conclusions.***

(emphasis supplied)

11. This Court following the decision in Ramesh Babulal Doshi, further observed that 'there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.’”

11. In this case, I am of the opinion that findings recorded by learned trial Court are based on correct appreciation of evidence and do not

suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out.

- 12. Instant application seeking leave to appeal is hereby dismissed.
- 13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.07.2023

sanjeev

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