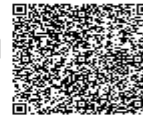


2024:PHHC:169711



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

299

CRR 661 of 2024

Date of Decision: 18.11.2024

Om Prakash Dhingra

...Petitioner

Versus

Chander Prakash and another

... Respondent

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

Present : Mr. Vikram Singh, Advocate with
Mr. Harkirat Singh, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition against the impugned judgment dated 02.12.2023 passed by the Court of Additional Sessions Judge, Faridabad and the impugned judgment dated 22.04.2022 passed by the Court of Judicial Magistrate 1st Class, Faridabad, whereby, the respondent was ordered to be acquitted of the charge under Section 448 IPC.

2. The FIR in the present case was registered on the basis of the statement made by Om Parkash Dhingra, present petitioner, who alleged that his father had died on 28.11.2016. After his death, Plot No. 5R1/B was given to Bhushan Kumar Taneja and he had given the same to Yogesh Dhingra. On 27.10.2017, Bhushan telephonically informed him that Yogesh Dhingra had vacated the shed and told him

to take possession of the same as Bhushan Kumar Taneja was going out of the city. The petitioner called his friend and told him to start his work. In the evening on 27.10.2017, his friend Vivek Jain sent a truck loaded with clothes. However, Chander Parkash, respondent/accused told him to park the truck outside and he would take the truck inside on the next day. In fact, respondent had broken the wall, installed a gate and had encroached upon his shed. Consequently, a prayer was made to take action against the respondent.

3. After the presentation of the challan, the respondent/accused was charge sheeted for the offence under Section 448 of IPC, however, the respondent pleaded not guilty and claimed trial.

4. In support of the charge, the prosecution examined PW1 Om Parkash Dhingra and PW2 SI Kailash Chand and, thereafter, the evidence was closed by the Court order.

5. PW1 Om Parkash Dhingra reiterated the averments made in the complaint whereas PW2 SI Kailash Chand was not the IO of the case.

6. After the closer of the evidence, the statement of the accused was recorded under Section 313 Cr.P.C., wherein, he denied all the allegations and pleaded innocence. Only document Ex.D1 was tendered on record in the defence evidence.

7. The trial was held before the Court of Judicial Magistrate 1st Class, Faridabad and vide the impugned judgment, the trial Court held that as per Ex.D1, the plot in dispute was in possession of the respondent since 1994. Still further, the prosecution had failed to show that the respondent/accused had no right to enter the suit property and Ex.D1 was nowhere controverted by the prosecution. Even on appeal, the findings were upheld and the appeal filed by the petitioner was ordered to be dismissed.

8. Learned counsel for the petitioner contends that the impugned judgments have been passed without appreciating the evidence led by the prosecution. In fact, the petitioner had led sufficient evidence to show that he was the owner in possession of the house in question and the respondent had no concern with the house. Even, a single act of entering into the house without the permission of the complainant would make the accused liable to be prosecuted for the offence of criminal trespass. Further, the findings of the Civil Court were not binding over the criminal case and the Courts had wrongly relied upon Ex.D1. Thus, the impugned judgments are liable to be set aside by this Court.

9. I have heard learned counsel for the parties and perused the record carefully.

10. In the present case, the complainant had alleged that he was owner in possession of the plot in question and the respondent had illegally trespassed on the plot after breaking the wall and had

installed the gate wrongly. However, as per the admitted case of both the parties, the property was jointly owned and possessed by all the seven brothers and sisters and they were owners in possession thereof in equal shares. Apart from that, the respondent had already instituted a civil suit and on his application, the parties had been directed to maintain status quo by the Civil Court. Even, I have carefully perused the findings recorded by the Courts and there is no merit on record to show that the present petitioner was the owner of the property in dispute and was in exclusive possession of the property. Even, PW1 had admitted in his cross-examination that after installing some new gate, the respondent had tried to illegally occupy the land. Still further, in his cross-examination, PW1 had admitted that the property in dispute was purchased by six brothers and one sister jointly in 1974 and the respondent had also wanted 1/7th share in the said property. Thus, it could never be held that the respondent had illegally trespassed in the property.

11. Even otherwise, the petitioner has filed the present petition under Section 401 of Code of Criminal Procedure and the law is well settled that the High Court in its revisional jurisdiction should not ordinarily interfere with the judgments of acquittal passed by the Courts below unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the lower Courts is limited only to the exceptional cases when it is found that the order under revision suffers from glaring illegality or has

caused miscarriage of justice or when it is found that the trial Court had no jurisdiction to try the case or where the High Court had illegally shut out the evidence, which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are few instances where the High Court would be justified in interfering with the order of acquittal. However, in the present case, both the Courts have correctly appreciated the evidence in the light of the settled principles of law. Thus, finding no merits, the petition is ordered to be dismissed.

18.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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