

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.10027 of 2020 in/and
CRR No.819 of 2020
Date of Decision : 08.04.2024

Gurmail SinghPetitioner

Versus

State of Punjab and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. G.S. Hayer, Advocate
for the applicant/petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

PANKAJ JAIN, J.

CRM No.10027 of 2020

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 5 days in filing the instant revision.

Notice of the application.

Mr. Mohit Kapoor, Sr. DAG, Punjab accepts notice and submits no objection.

For the reasons recorded in the application, this Court is satisfied that the applicant/petitioner has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 5 days in filing the instant revision is hereby condoned.

Complainant is in revision against the judgment dated 31st of October, 2019 passed by Ld. Additional Sessions Judge, Sri Muktsar Sahib affirming the judgment dated 17th of February, 2017 passed by Sub Divisional Judicial Magistrate, Sri Muktsar Sahib whereby the respondents/accused stand acquitted in FIR No.18, dated 22.06.2012 registered for the offences punishable under Sections 323, 324, 326, 148, 149 of the Indian Penal Code, at Police Station City Malout

2. FIR was registered after PW-5 ASI Surjit Singh received MLRs Ex. PW4/B and PW4/C on 19th of June, 2012 *qua* injuries suffered by Gurmail Singh, the petitioner and Mohinder Singh injured, respectively. Statement of petitioner was recorded wherein the petitioner claimed that on 18th of June, 2012 Kapoor Singh & Shaminderjit Singh armed with spade, Pritam Singh armed with *dang*, Major armed with *dang*, Lakhwinder Singh armed with Spade, Pritam Singh armed with *dang*, Major Singh armed with *dang*, Beant Singh armed with *dang*, Kuldeep Singh armed with Kasia, Gurjant Singh armed with spade, Parminder Singh armed with *dang* and Rabinder Singh empty handed caused them injuries. After inflicting injuries upon the persons of complainant and his brother, accused ran away from the spot along with their respective weapons. It is being claimed that the motive behind the occurrence was that there is a dispute of watercourse between the complainant and the accused party for the last 6-7 months. Due to this reason only, the accused party badly beaten the petitioner and his brother and caused injuries to them.

3. Trial Court after analyzing the evidence threadbare found that initially complainant himself admitted the enmity with the accused party over the watercourse in question and placed certified copy of order whereby the *lis* stands decided in favour of accused by the Court of Divisional Canal Officer, Abohar. However, during cross-examination he feigns ignorance *qua* the said dispute. Prime witness to the alleged occurrence i.e. PW-3 Mohinder Singh resiled from his statement made to the police and turned hostile. As per complainant, Zildar Patwari and Chowkidar were present at the spot. But they also resiled from witnessing the said occurrence. Dr. Paramjit Kaur who medico legally examined the injured, appeared as PW4. During cross-examination she stated that there is over writing *qua* the number of injuries. Firstly, injuries were written as '7' and after cutting as '6'. The injuries, as per MLR Ex. PA and statement of doctor Ex. PW4, do not tally with each other. Injury No.1 do not tally with the weapon. Injury No.3 was stated to be inflicted with *dang*. However, as per MLR no mark thereof was found present. Further witnesses i.e. PW7 and P-8 also denied the fact of witnessing any quarrel and were declared hostile. Hence, the Trial Court found that the prosecution has miserably failed to prove the case against the accused persons beyond reasonable doubt and acquitted them of charges framed against them.

4. The petitioner preferred an appeal before the lower Appellate Court. The learned Appellate Court found that the judgment acquittal passed

by the learned Trial Court does not suffer from any infirmity and consequently, dismissed the appeal.

5. Counsel for the petitioner has not been able to demonstrate any legal infirmity in the judgments passed by the Courts below that can persuade this Court to invoke the revisional jurisdiction under Section 401 Cr.P.C.

6. The scope of the revisional jurisdiction of this Court while exercising jurisdiction under Section 401 Cr.P.C. in the matters related to concurrent findings of acquittal recorded by the Courts below has been well laid down by the Supreme Court in the case of **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)"

7. 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."

8. 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 reappreciate 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.”

9. In view of above, this Court does not find it to be a fit case to exercise revisional jurisdiction under Section 401 Cr.P.C. to upset the findings recorded by the Courts below. Resultantly, the present revision petition is dismissed.

08.04.2024
Dpr

(PANKAJ JAIN)
JUDGE

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