

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

CRM-M-26773-2014

Reserved on: 07.02.2024

Pronounced on: 09.02.2024

2024:PHHC: 018611

RAJESH

. . . . PETITIONER

Vs.

STATE OF HARYANA AND OTHERS

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - None for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

Mr. Raman Kaswan, Advocate,
for respondent Nos.3, 4, 6 & 7.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of judgment dated 04.12.2012 passed by Id. Sessions Judge, Jind (Annexure P4), whereby revision petition filed by the respondents-accused to set aside the order of charge dated 31.07.2012 passed by Id. JMIC, Jind, was allowed.

2. As the paper-book would reveal that FIR No.178 dated 31.10.2011 (Annexure P1) under Sections 447/379 IPC was registered at Police Station Julana, District Jind on the complaint of petitioner-Rajesh against respondents-accused alleging that the accused had entered the fields of the petitioner and harvested the crop. After necessary investigation, challan was filed. Id. JMIC, Jind vide order dated 31.07.2012, charge-sheeted the respondents-accused under Section 379 and 447 IPC. This order was challenged by the respondents before Id. Sessions Judge, Jind and the

same has been set aside by way of the impugned order dated 04.12.2012 (Annexure P4).

3. It was pleaded in the petition that well reasoned order passed by the Magistrate had been wrongly set aside by the Id. Sessions Judge. However, at the time when this case was fixed before this Court for arguments, nobody turned up for the petitioner-complainant despite last opportunity and despite making it clear on the previous date of hearing that in case arguments are not addressed, the Court would be constrained to dispose of the matter on merits.

4. In the aforesaid circumstances, counsel for the respondents have been heard and paper-book has been thoroughly perused.

5. The impugned order (Annexure P4), passed by Id. Sessions Judge, Jind reads as under: -

“Revisionists have preferred the present revision for setting aside the order dated 31.07.2012 passed by Shri Amit Verma, the then learned Judicial Magistrate Ist Class, Jind in criminal case No. 22-1 dated 04.06.2012 pertaining to FIR No. 178 dated 31.10.2011, Police Station, Julana charge sheeting them under Section 379 and 447 IPC, pleading that the learned trial court has committed a great error while not considering the material facts that no prima facie case was made out against them for commission of the aforesaid offences. They being co-owners in the disputed land were in its possession much prior to the registration of the present case. They did not commit any offence as alleged and thus, they were liable to be discharged.

2 I have heard learned counsels for both the sides and carefully gone through the case file.

3 As per prosecution story. on 27.10.2011, the revisionists dishonestly had stolen paddy crop by trespassing in the leasehold land of the complainants namely Rajesh son of Ramphal and Ranbir son of Ram Chander and sold the same and thus, committed the offence under Section 379 and 447 IPC.

4 Police after investigation filed final report against them in the court under Section 173 Cr.P.C. and thereafter, after going through the record, they were charge sheeted as such under Section 379 and 447 IPC by learned trial court vide impugned order dated 31.07.2012.

5 Undisputedly, the lease in favour of the complainant has already been set aside vide civil court judgment and decree dated 26.9.2011 passed by Shri Najar Singh, the then learned Additional District Judge, Jind, photocopy of which is lying with the lower court file. As per Jamabandi for the year 2008-09, photocopy lying on the court file, revisionists being co-sharers in the suit land land were legally in possession of its every inch and hence cannot be termed as trespassers. Being their co-sharership, they also cannot be treated as thief. I am fortified in my views by 2011 (3) RCR (Criminal) RCR 263 Sadhu Singh and others Versus State of Punjab and another, which squarely clearly covers the facts and circumstances of the present case.

6 The learned trial court has certainly erred in ignoring the aforesaid civil court judgment and revenue record. It would have gone if through the above documents, in that event it would have certainly discharged the revisionists. Since no prima facie case is made out against them, therefore impugned order dated 31.7.2012 is hereby aside set and consequently, the revisionists are discharged by accepting their present revision.”

6. This Court does not find any illegality or perversity in the aforesaid order, which is based upon reason and the correct legal position. Ld. Sessions Judge has taken into consideration the civil court judgment as well as revenue record to find that the respondents were the co-sharers in the land in dispute. The respondents-accused, having been found to be co-sharers in the land in dispute, could not have been termed as a trespasser or the thieves in their own land. As such, it is held that ld. Sessions Judge rightly set aside the order of JMIC, Jind charge-sheeting the respondents-accused.

No Merits. Dismissed.

09.02.2024
Vivek

(DEEPAK GUPTA)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |