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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Criminal Revision No.3435 of 2016 (O&M)
Date of Decision: 22.10.2024

Iqbal Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Kumar Bokolia, Advocate,
for the petitioner.

Mr. Amandeep Singh Samra, AAG, Punjab,
for the respondent-State.

Mr. Amar Jeet, Advocate,
for respondents No.2 to 5.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner challenging the findings given in the judgment dated 13.06.2016 passed by the Court of learned Additional Sessions Judge, Moga in Criminal Appeal No.148 of 2015 titled as *Jagtar Singh and others v. State of Punjab*, whereby, while partly allowing the appeal, the conviction of accused Nachattar Singh, Gurbachan Singh and Harpreet Singh, as awarded by learned trial Magistrate had been set aside, the accused Gurdev Singh and Jagtar Singh were acquitted of charge under Section

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148 of IPC and the sentence awarded to them under Section 323 read with Section 149 of IPC and Section 325 read with Section 149 of IPC had been modified and converted to conviction under Sections 323 and 325 read with Section 34 of IPC and the sentence awarded to them under Section 325 of IPC read with Section 34 of IPC was reduced to rigorous imprisonment for a period of one year without any alteration with regard to the remaining part of the sentence.

2. For the sake of continuity and coherence, parties shall be referred to hereinafter as per the same nomenclature as given before the trial Magistrate.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that on 13.05.2006, a statement was made by the present petitioner-complainant Iqbal Singh to the police alleging therein that on 12.05.2006, he was going to give food to the labourers working in his fields in a jeep. When he reached on the road leading to Village Wadda Ghar, he was intercepted by the accused Nachattar Singh, Jagtar Singh, Gurdev Singh, Gurbachan Singh and Harpreet Singh who were present there in a jeep. They were armed with weapons. The accused Harpreet Singh gave a lalkara proclaiming that the petitioner-complainant should be taught a lesson for diverting the water to his fields during their turn of water. On hearing so, the petitioner-complainant alighted from his jeep and told them that it was due to some misunderstanding that he had diverted the water but in the meantime, the accused opened an assault upon him by striking blows with the weapons i.e. dangs and spades, which they were carrying with them. The

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complainant raised rescue alarm on hearing which, his father rushed towards the spot and saw the occurrence. On seeing him, the assailants fled away in their jeep. He was taken to the hospital. On the basis of his statement, initially a DDR under Sections 323, 148 read with Section 149 of IPC was registered. Subsequently, on receipt of medical report regarding sustaining grievous injury by the complainant, offence under Section 325 of IPC was added. FIR was registered. Subsequently, the accused Nachattar Singh, Gurdev Singh, Gurbachan Singh and Harpreet Singh were found to be innocent. Their names were kept in Column No.2 of the challan report. The accused Jagtar Singh was arrested. After completion of necessary investigation and usual formalities, challan was presented against him.

4. On finding a prima facie case for commission of offences punishable under Sections 323 and 325 of IPC, the accused Jagtar Singh had been charge-sheeted accordingly. Subsequently, on allowing of an application moved under Section 319 of Cr.P.C., the accused Nachattar Singh, Gurdev Singh, Gurbachan Singh and Harpreet Singh were ordered to be summoned as additional accused. On their appearance, charges under Sections 148, 323 and 325 read with Section 149 of IPC were framed against them. They pleaded not guilty to the charges and claimed trial.

5. To substantiate its case, the prosecution examined six witnesses in all besides placing reliance upon certain documents and thereafter the prosecution evidence was closed by learned public prosecutor.

6. Statements of accused were recorded under Section 313 of Cr.P.C.. They abjured their guilt and claimed themselves to be innocent. In

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defence evidence, the accused examined six witnesses.

7. On appraising the evidence produced on record and considering the contentions raised by both the sides, the learned trial Magistrate held the accused guilty and they were sentenced to undergo rigorous imprisonment for a period of three years for commission of offence punishable under Section 148 of IPC and further sentenced to undergo rigorous imprisonment for a period of three years for commission of offence punishable under Section 325 of IPC read with Section 149 of IPC and to pay fine of Rs.500/- each and in default of payment of fine, they were further sentenced to undergo rigorous imprisonment for a period of one month. They were further sentenced to undergo rigorous imprisonment for a period of one year for commission of offence punishable under Section 323 of IPC read with Section 149 of IPC. All the substantive sentences were ordered to run concurrently.

8. Feeling dissatisfied, the accused filed an appeal against the judgment of the trial Court and as discussed above, vide judgment dated 13.06.2016, the said appeal was partly allowed.

9. It is argued by learned counsel for the petitioner-complainant that the impugned judgment dated 13.06.2016 is liable to be set aside to the extent to which the accused Nachatar Singh, Gurbachan Singh and Harpreet Singh had been acquitted of the charges as framed against them and also to the extent to which the sentence awarded to the accused Jagtar Singh and Gurdev Singh had been reduced. It is submitted that the learned Lower Appellate Court ignored the fact that there was overwhelming evidence on

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record to prove that all the accused by forming membership of an unlawful assembly had opened an assault upon the petitioner-complainant on the fateful day and had voluntarily caused simple as well as grievous injuries to him and had also committed the offence of rioting. The medical evidence produced on record coupled with the oral testimonies of PW-2 Sukhdev Singh i.e. his father and himself was sufficient to prove the allegations in the FIR. The petitioner-complainant had identified the respondents-accused as the persons who had caused injuries to him. They were also duly identified by him at the time of recording his depositions. The learned Lower Appellate Court did not apply its judicious mind. A cryptic and non-speaking order had been passed. With these broad submissions, it is argued that the impugned judgment is liable to be set aside, the revision petition deserves to be accepted and the order passed by the learned trial Magistrate deserves to be upheld. It will not be out of place to mention here that the accused-Gurdev Singh had died during the pendency of the appeal before the learned Lower Appellate Court.

10. Learned State counsel has not raised any serious objections to the contentions raised by learned counsel for the petitioner and has submitted that the same may be allowed.

11. Per contra, it is argued by learned counsel for the present respondents No.2 to 5 that the revision petition is not maintainable to the extent to which the findings as to acquittal of the present respondents No.3 to 5 i.e. accused namely, Nachattar Singh, Gurbachan Singh and Harpreet Singh, are concerned as the remedy available before the petitioner-

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complainant was to prefer an appeal against the said order and not a revision petition. Therefore, it is argued that the revision petition qua the present respondents No.3 to 5 is liable to be dismissed on this ground alone.

12. It is further argued by learned counsel for the respondents that even otherwise the findings as given by learned Lower Appellate Court are well reasoned and no ground has been made out for interfering with the same. It is, accordingly, urged that the petition is liable to be dismissed on the ground of maintainability as well as being devoid of any merit.

13. On giving due deliberations to the contentions as raised by both the sides and on a careful perusal of record, I am of the considered opinion that the argument as raised by learned counsel for the present respondents with regard to maintainability of the revision petition as to findings of acquittal as recorded by learned Lower Appellate Court qua the present respondents No.3 to 5-accused deserve to be accepted. As per Section 372 of the Code of Criminal Procedure, a victim has a right to prefer an appeal against any order passed by the Court acquitting the accused and the remedy of revision is not available in such like cases. As such, the petition to that extent is liable to be dismissed as not being maintainable. Even otherwise, it is revealed from the record that while passing the judgment dated 13.06.2016, the learned Lower Appellate Court had duly considered the fact that though there was evidence on record to prove that the petitioner-complainant had sustained simple as well as grievous injuries on his person but it had not been proved that these injuries were voluntarily caused by the present respondents No.2 to 5 by forming any membership of unlawful

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assembly. First of all, there was delay in reporting the matter to the police which had not been satisfactorily explained. Then the case of prosecution mainly rested upon the testimonies of the petitioner-complainant and his father who appeared as PW-1 and PW-2 respectively and the same had not been corroborated by any independent and disinterested evidence. The statements of both these witnesses with regard to attribution of injuries and with regard to the nature of the weapons carried by the respondents-accused were contradictory. As alleged in the complaint/FIR, the accused Nachattar Singh and Gurbachan Singh were armed with dangs but while appearing as PW-1, the complainant deposed that Nachattar Singh had struck a blow with spade on his left arm whereas PW-2 stated that Nachattar Singh was armed with a pistol and accused Gurbachan Singh was armed with .315 bore rifle. PW-2 did not attribute any injury to both these accused. No injury had been attributed to respondent-accused Harpreet Singh. The learned Lower Appellate Court also considered the fact that the complainant and his father were having criminal antecedents and several criminal cases including cases of murder were lodged against them and even they have been awarded life imprisonment in those cases. The learned Lower Appellate Court did not commit any error by considering the statements of these witnesses to be unreliable. The petitioner-complainant has not been able to point out any infirmity or lacuna in the findings as recorded by learned Lower Appellate Court which could be considered to be sufficient. It is relevant to mention here that there is a presumption of innocence in favour of the respondents-accused which was reinforced, reaffirmed and strengthened by the order

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passed by the learned Lower Appellate Court. This Court has power to review, reappraise and reconsider the evidence upon which the order of Lower Appellate Court is founded while bearing in mind that in case of acquittal, there is double presumption in favour of the accused. The petitioner-complainant was required to show that the findings as given by learned Lower Appellate Court were palpably wrong, manifestly erroneous and demonstrably unsustainable which he has not been able to show. On an overall perusal of the evidence produced on record, I am of the considered opinion that no perversity can be found by the findings recorded by learned Lower Appellate Court as to acquittal of present respondents No.3 to 5-accused as the same have been recorded after appreciating the evidence produced on record and, therefore, they do not deserve to be interfered with.

14. So far as the present respondent No.2-accused Jagtar Singh is concerned, he was sentenced to undergo rigorous imprisonment under Sections 323 and 325 read with Section 149 of IPC and Section 148 of IPC. His sentence was converted to conviction under Sections 323 and 325 read with Section 34 of IPC with no alteration with regard to the part of sentence. Since it was only the present respondent No.2-accused Jagtar Singh who had been held guilty and convicted and the allegations levelled against the remaining respondents-accused have not been proved beyond doubt, therefore, no wrong had been committed by converting the conviction from that under Section 149 to Section 34 of IPC by the learned Lower Appellate Court and, therefore, the findings so given are also not liable to any interference. In view of the discussion as made above, it is held that the

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revision filed by the petitioner-complainant challenging the order of acquittal of the present respondents No.3 to 5 is not maintainable in view of provisions of Section 372 of Cr.P.C. and even on merits and the order passed by learned Lower Appellate Court thereby converting the sentence/conviction of the present respondent No.2-Jagtar Singh also does not warrant any interference and hence, the same is liable to be dismissed qua this respondent also. Ordered accordingly.

15. Miscellaneous application(s), if any, also stand disposed of.

22.10.2024
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(MANISHA BATRA)
JUDGE

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