

CRR-4947-2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

270

CRR-4947-2015

DATE OF DECISION: 10.12.2024

AVTAR SINGH

.....PETITIONER

Versus

STATE OF PUNJAB AND ORS

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Bhoop Singh, Advocate
for the petitioner.

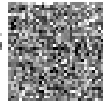
Mr. J.S. Rattu, DAG, Punjab

SANDEEP MOUDGIL, J

1. The present revision has been preferred to challenge the order dated 24.09.2015 passed by the Addl. Sessions Judge, whereby the judgment of acquittal passed by JMIC, Ludhiana dated 3.09.2013 has been upheld and the appeal filed by the petitioner has been dismissed.

2. Background facts in a nutshell are as under :

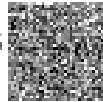
At 7:30 PM on the date 8.04.2008 the present petitioner was present in the attic and his son Inderpal Singh was present in in his bedroom, thereafter they heard some loud abuses, from the attic the petitioner saw that one Paramjit Singh, Gurmail Singh, Gurdev Singh , Jarnail Singh along with some other persons were present in the street and they were saying that they will teach him a lesson today for using abusive language. At that time Gurmail Singh, Paramjit Singh s/o Kabal Singh were having kirpan and Paramjit Singh



s/o Harbans Singh was having short Kirpan and other persons were having sticks and stones and they entered the house of the petitioner. Paramjit Singh s/o Kabal Singh gave 2-3 blows on the right arm of the son of the petitioner namely Inderpal Singh, Gurmail Singh gave 2 blows on the back of his son. Paramjit Singh s/o Harbans Singh gave 2-3 blows on the left arm of his son, the remaining accused persons were pelting stones and bricks on him and his family members. They also broke household articles of his house. The complainant and his family namely Davinder Kaur the wife of the petitioner and Paramjit Kaur his daughter-in-law raised hue and cry. The son of the petitioner tried to go inside the room, but he fell down on the bed and the accused persons inflicted injuries while he laid down on the bed, then the accused persons pulled his hair, beard and gave beating to him and took Rs 25,000/- from his pocket and subsequently fled from the spot along with their respective weapons. The motive stated behind the occurrence was that some days ago the respondents abused the petitioner in the panchayat to which he objected.

3. Contentions on behalf of the petitioner

The counsel for the petitioner argues that an appeal was preferred before the lower appellate court contending that sufficient opportunities were not granted by the trial court to the petitioner to lead his evidence and the trial court had wrongly closed the evidence of the prosecution by order, the charges being framed on 21.12.2009 and the petitioner not being served personally to appear as a witness till 8.08.2013. The petitioner after being served on 8.08.2013 could not appear in the court as he suffered a paralytic attack and during the course of august to December 2013 was in poor health and was also



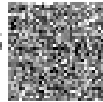
hospitalised numerous times. Thereafter the petitioner did not receive any summons or warrants to appear as a witness before 08.08.2013.

The counsel for the petitioner further contended that the case be remanded back for proper adjudication of case after examination of the petitioner and the other eye witnesses i.e. Davinder Kaur, Inderpal Kaur and Paramjit Kaur, and also contends that the lower appellate court dismissed the appeal of the petitioner without appreciating the facts and upheld the findings of acquittal passed by the trial court vide judgment dated 03.09.2013 of JMIC, Ludhiana. Therefore the order dated 24.09.2015 passed by the Addl. Sessions Judge is devoid of merits and liable to be set aside.

4. Heard.

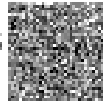
5 **Analysis**

This court upon perusal of the record of the trial court and also the lower appellate court is of the considered view that, since the accused persons pleaded guilty, they were put on trial. And in order to substantiate the charges the prosecution examined two witnesses namely Dr. Jaspreet Singh Gill, Medical Officer, Borstal Jail, Ludhiana as PW1 and SI Jagtar Singh, the investigating officer of the case as PW2. No other witness was examined by the prosecution. Subsequently when the prosecution could not conclude its evidence after availing numerous opportunities, therefore the trial court by order closed the evidence of the prosecution. Thereafter the trial court examined the accused under section 313 Cr.P.C. and put all the incriminating evidence to them, but the accused denied all allegation, claimed innocence and also claimed false implication in the case. The trial court upon hearing the counsels for both the parties and perusal of record held the accused-



respondents No. 2-6 to be acquitted from the charges from against them. The same finding of acquittal was upheld by the court of Addl. Session Judge, Ludhiana and the appeal filed by the petitioner was dismissed. The lower appellate Court held that the prosecution failed to ascertain the guilt of the accused-respondents No. 2-6 namely Paramjit Singh, Gurmail Singh, Jarnail Singh, Gurdev Singh, and Paramjit Singh beyond reasonable doubt and opined that sufficient opportunity was granted to the complainant by the trial court to lead the evidence as the trial court had issued the process for procuring the presence of the complainant-appellant Avtar Singh and his wife namely Davinder Kaur for recording the evidence and the service was effected through their son namely Inderpal Singh on different occasions and despite service the complainant-appellant and his wife did not appear, even after having knowledge regarding the proceedings of the case and intentionally failed to appear before the court, then the complainant-appellant is not open to allege that the trial court did not use coercive measures to attain his and his wife's presence, therefore held the contention of the complainant-appellant is devoid of merits.

This court finds no cogent reason to interfere with the order dated 24.09.2015 passed by the Addl. Sessions Judge as the complainant-appellant/prosecution failed to substantiate the guilt of the Accused-respondents No. 2 to 6 beyond any reasonable doubt and is also of the considered view that the cardinal principle of the criminal jurisprudence which is the keystone while deciding the criminal cases is that the onus lies with the prosecution to prove its case and establish the guilt of the accused beyond and reasonable doubt. The guilt of the accused cannot be established and



subsequent conviction of the accused cannot be possible without any legal substantive evidence as the evidence is an essential in criminal proceedings notwithstanding the seriousness of the allegations alleged against the accused because criminal proceedings require strict proof of guilt.

In the case of “**Ajay Kumar Saini v. State of Haryana**” 2014(1) RCR (Criminal) 933 wherein a co-ordinate bench of this court discussed the powers of revision court and provided certain guidelines for same as mentioned under:

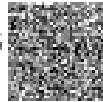
“8. The factum of powers of the revisional court dealing with the revision against acquittal being extremely reiterated by the Hon'ble Supreme Court in the case of K. Ramachandran v. V.N. Rajan & Anr. {2010 (5) RCR (Criminal) 237, wherein it was held as under:-

This question has been considered in the celebrated judgment of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583], where, after considering the judgments of D. Stephens v. Nosibolla [1951 SCR 284], Logendranath Jha v. Polailal [1951 SCR 676], K.C. Reddy v. State of Andhra Pradesh [(1963) 3 SCR 412] and Mahendra Pratap Singh v. Sarju Singh [(1968) 2 SCR 287] this Court came out with categories of case which would justify the High Court in interfering with the finding of acquittal in revision:

"(i) Where the trial Court has no jurisdiction to try the case, but has still acquitted the appellant- 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;

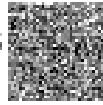


- (iv) *Where the material evidence has been overlooked only (either) by the Trial Court or by the appellate Court; and*
- (v) *Where the acquittal is based on the compounding of the offence which is invalid under the law."*

Of course, these categories were declared by this Court to be illustrative and this Court observed that other cases of similar nature could also be properly held to be exceptional in nature where the High Court could justifiably interfere with the order of acquittal. In this very judgment though in paragraph 10, this Court did not generally approve of the appreciation of evidence by the Trial Court Judge and held it to be not perfect or free from flaw and further observed "the Court of appeal may be justified in disagreeing with the conclusion, but it does not follow that on revision by a private complainant, the High Court is not entitled to reappreciate the evidence for itself as if it is acting as a Court of appeal and then order a re-trial." The situation, as we will show further, is identical in the present case.

9. In the said case, it has been pointed out that re-appreciation of evidence cannot be done by the revisional Court while dealing with the judgment against acquittal unless and until there are some procedural irregularities or illegalities in the decision of the case. Even if the reading of evidence by the trial Court is free from flaw the same cannot be a ground to justify the exercise of powers in revision against acquittal. It is pertinent to mention herein that in the case of Akalu Ahir & Ors. v. Ramdeo Ram [(1973) 2 SCC 583], the Hon'ble Supreme Court held as under:-

"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 re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is



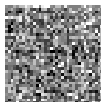
unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."

10. Similarly, in the case of *Hydru v. State of Kerala*, {2004 (13) SCC 374}, the Hon'ble Supreme Court has held as under:-

"3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court".

11. Thus, it is apparent that re-appraisal of evidence is not possible in a revision against acquittal unless and until there are some procedural irregularities or illegalities, which has been pointed out by the complainant/petitioner so as to justify the exercise of revisional powers by this Hon'ble Court."

That being so, this court is also in agreement with the settled principle of law regarding the revision jurisdiction of the high court and on



perusal of the record of lower appellate court finds no procedural irregularities or illegalities, so as to justify the exercise of the revision powers by this court.

6. Decision

From the discussion here-in above this court is of the view that there is no need to interfere with the well-reasoned order dated 24.09.2015 passed by the Addl. Sessions Judge, whereby the judgment dated 03.09.2013 as passed by the Trial Court has been upheld.

7. Dismissed in aforesaid terms.

10.12.2024

Poonam Negi/*anuradha*

(Sandeep Moudgil)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No