

CRR-2425-2017

238
IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-2425-2017
Date of decision: 30.01.2024

Sukhdev Singh
...Petitioner
Versus
State of Punjab and others
...Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. N.S. Dandiwal, Advocate for the petitioner.
Mr. Subhash Godara, AAG, Punjab
None for respondents No. 2 and 3

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 01.03.2017 passed by learned Additional Sessions Judge, Moga whereby the appeal filed against judgment of acquittal dated 02.05.2013 passed by learned Chief Judicial Magistrate, Moga in FIR No. 299 dated 14.12.2001 registered under Sections 465, 466, 120-B of the IPC at Police Station Dharamkot, District Moga, was dismissed.
2. Briefly, the facts are that the petitioner-complainant was keen to contest the elections for the post of Sarpanch, Gram Panchayat, village Kannian Khas in the year 1998. Apprehending competition from the petitioner-complainant, respondent No. 2-accused Zora Singh hatched a conspiracy in connivance with respondent No. 3 and made Rapat No. 632 dated 20.08.1996 in the Roznamcha of the concerned Patwari for change of khasra girdawari of khasra no. 18//9(8-0) in favour of the petitioner-complainant and his family, with

an intention to ensure rejection of petitioner's nomination papers as the Punjab Panchayati Raj Act, 1994, forbids those who are cultivating the land of the panchayat from contesting elections to the Gram Panchayat. The rapat no. 632 daed 20.08.1996 was written by respondent no. 3 and attested by respondent no.

2. Thereafter, the petitioner filed a complaint before SSP, Moga which was marked to Anti-Fraud Staff. It was concluded that allegations against respondent no. 3 are not made out and report of District Attorney (Legal) was sought and subsequently, case was recommended against respondents no. 2 and 3

along with Baldev Singh, Patwari. However, on receipt of Forensic Science Laboratory, challan was presented against respondent no. 2 and Baldev Singh only.

3. After assessing all material on record, the learned trial Court acquitted the accused vide judgment dated 02.05.2013. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 01.03.2017, as the appeal was barred by time.

4. Learned counsel for the petitioner assails the judgment of conviction on the ground that the Forensic Report categorically states that the rapat no. 632 dated 20.08.1996 vide which the change in khasra girdawari was made is in the hand of respondent no. 3. Further, the signature on the same matched with the signatures of respondent no. 2. It is duly proved that rapat no. 632 was not made by the concerned patwari but was made by respondent no. 3 at the instance of respondent no. 2 with the sole intention to debar the petitioner and his family from contesting the elections.

5. Learned counsel further submits that the petitioner being a layman,

was under the impression that appeal before the learned lower Appellate Court will be filed by the Office of District Attorney. He moved an application inquiring about the same and vide reply dated 14.06.2013, he was informed that no appeal has been preferred by the State. Thereafter, the petitioner obtained a certified copy of the trial court judgment on 30.06.2013 and filed the appeal on 01.07.2013. However, the application seeking condonation of delay under Section 5 of the Limitation Act, 1963 was dismissed and consequently, the appeal was dismissed being barred by time. The learned lower Appellate Court erroneously failed to appreciate the bonafide reasons for delay and adjudicate the case on merits.

6. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that no resolution was passed by the Gram Panchayat reflecting the land to be leased out to the petitioner and his family has been proved on record. Further, rapat no. 632 whereby the alleged change in khasra girdawari was made, is also not proved on record to indicate that the respondent no. 3 is guilty of tampering with the revenue records. In fact, DW3- Rajbir Singh, Secretary, Gram Panchayat, village Kannian Khas, has categorically stated that no resolutions were ever passed regarding leasing out land to the petitioner, his wife or parents.

7. Furthermore, the seat of Sarpanch for the village Kannian Khas was reserved for women in the year 1998. The main grievance of the petitioner is that respondents No. 2 and 3 had conspired to ensure his nomination papers, which are also not proved on record, were rejected but the petitioner could not have contested the elections anyway owing to the reservation. In his cross-examination, the petitioner pleaded ignorance to the fact of reservation.

CRR-2425-2017

Admittedly, the petitioner’s wife namely Sukhbir Kaur had contested the elections for the post of Sarpanch in the year 1998 and lost to one Gurmeet Kaur. Lastly, while the case of the petitioner revolves around elections for the year 1998, the criminal law machinery was only set into motion in 2001. The petitioner has failed to provide a reasonable justification for the delay of 3 years in lodging the FIR.

8. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. (*See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment passed in *State of Haryana Vs. Ankit and others* passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

9. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in findings recorded by the learned lower Appellate Court or the learned trial Court which warrants interference by this Court. As such, there is no merit in the present present revision petition and the same is dismissed.

January 30, 2024

reena

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No