

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2261 of 2018 (O&M)
Date of decision : 24.04.2024

Billu Singh and anotherPetitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Munish Garg, Advocate for
Mr. Anupam Gupta, Advocate
for the petitioners.

Mr. Mohit Kapoor, Senior Deputy Advocate General, Punjab
for respondent No.1-State.

Ms. Saloni Sharma, Advocate for respondent No.2.

PANKAJ JAIN, J. (ORAL)

By way of present petition, the petitioners have assailed the judgment passed by the Appellate Court whereby the petitioners have been held guilty of offence punishable under Section 323, 325 read with Section 34 IPC and ordered to be released on probation and have also been directed to pay compensation of Rs.10,000/- each to the victim.

2. Petitioners were booked in FIR No.63 dated 23rd of July, 2007 registered at Police Station Boha, District Mansa and charged for offence punishable under Section 323, 325 read with Section 34 IPC. Trial Court acquitted them holding that there was an inordinate and unexplained delay in lodging of FIR. Occurrence is of 18th of July, 2007, statement was recorded

on 21st of July, 2007 but FIR was registered only on 23rd of July, 2007. It was further held that only eye-witness Kulwinder Singh PW-2 being son of the complainant is an interested witness. There being no independent witness to corroborate the allegations levelled by the complainant and no document produced on record to prove ownership of the land of the complainant, the version of the complainant could not be proved beyond reasonable doubt and the benefit thereof has to go to the accused.

3. In the appeal preferred by the complainant, Appellate Court reversed the judgment passed by the Trial Court. Appellate Court held that the occurrence is of 18th of July, 2007 and on the same day message was received in the police station. An application Exhibit PW7/A was moved by the police authorities before the Medical Officer to record statement of injured Sher Singh who was declared unfit to make statement. On 19th of July, 2007 again similar application Exhibit PW7/B was moved and the doctors again declared the victim to be unfit to make statement. Endorsements have been proved on record to the said effect i.e. Exhibit PW6/E. It was only when on 21st of July, 2007 that the complainant was declared fit to make statement, his statement was recorded leading to registration of FIR. Appellate Court thus rightly held that the delay, if any, stands fully explained and the same cannot be held to be fatal to the case of the prosecution. The Appellate Court further held that PW-2 Kulwinder Singh is natural witness to the occurrence and thus his testimony cannot be discarded merely on the basis of him being related to the

complainant/victim. Appellate Court further held that there being no necessity for the complainant to prove that he owns land in village Kashampur to prove offence punishable under Section 323, 325 read with Section 34 IPC, Trial Court erred in non-suiting the prosecution on the said ground. In view of the statement made by injured witness i.e. the complainant himself, the injuries having been fully proved on record, the Appellate Court thus rightly reversed the judgment passed by the Trial Court and held the petitioners guilty. Since grievous injury was on the hand of the victim they were released on probation on paying compensation of Rs.10,000/- each to the victim.

4. I have heard counsel for the parties and have gone through records of the case.

5. Counsel for the petitioners wants this Court to re-appreciate the entire evidence and has not been able to show any glaring error of law that can persuade this Court to exercise jurisdiction under Section 401 of the Code.

6. Law w.r.t. exercise of jurisdiction under Section 401 Cr.P.C. in the cases involving order of acquittal passed by the Court below stands well laid down by the Apex Court in the case of **Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907** wherein it has been held that -

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a

revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. **It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice.** The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See **AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla**; **AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh**; **(1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram**; **AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another** and **AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh**).”

7. In view of above, this Court does not find that the present case falls within the parameters as laid down by the Supreme Court in the case of

Bindeshwari Prasad Singh's case (supra). Resultantly, the revision petition is dismissed.

April 24, 2024

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No