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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 2551 of 2018 (O&M)
Date of decision: 09.02.2024

Amar Singh

...Petitioner

Versus

Mewa Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present: Mr. Japartap Singh Salana, Advocate
and Mr. Gurminder Singh Salana, Advocate
for the petitioner.

None for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 01.03.2018 passed by learned Additional Sessions Judge, Fatehgarh Sahib whereby appeal against judgment of acquittal dated 08.10.2013 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib in FIR No. 23 dated 25.02.2002 registered under sections 447, 427, 148, 149 of the IPC at Police Station Amloh, District Fatehgarh Sahib, was dismissed.

2. Briefly, the facts are that on the intervening night of 24/25.05.2002, around midnight, the petitioner saw tractor lights on the land he had taken on lease from the Gram Panchayat. On reaching the spot, he saw Nachattar Singh, Guri Bhalwan, Netar Singh, Jeet Singh, Dharamjit Singh ploughing wheat crop with the help of their tractors. Major Singh son of Amrik Singh, Sukhwinder Singh, Avtar Singh alias Billu, Pakhar Singh, Shingara Singh, Major Singh son of

Kehar Singh, Avtar Singh, Chhotta Singh, Baljit Singh, Bhagwant Singh, Sukhdev Singh and Avtar Mohammed were also present on the spot, armed with sticks, gandasas and swords. The petitioner fled the spot out of fear and narrated the incident to Avtar Singh, nephew of Sher Singh. The petitioner registered the instant FIR stating that the respondents-accused had damaged the wheat crop on his land.

3. After assessing all material on record, the learned trial Court acquitted the accused vide judgment dated 08.10.2013. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court which was dismissed vide judgment dated 01.03.2018.

4. Learned counsel for the petitioner submits that the learned Courts below have failed to consider that the prosecution case stands duly proven by the testimonies of PW2-complainant-petitioner and PW3-Avtar Singh, who is an eye-witness. The identity of respondents no. 1 to 16 has also been established since they were already known to the petitioner. The khasra girdawaris proved that wheat was sown in the said land and the same was in possession of the petitioner. There also exists an entry of Kharaba Bahuja Bahi in the Khasra Girdawari (Ex. P-25) indicating damage to the said crop. Further, the learned Civil Court had passed a judgment and decree dated 29.10.2009 granting damages on the same incident regarding which the instant FIR was registered. In fact, the appeal by Nachhattar Singh, Guri Pehalwan, Netar Singh, Jeet Singh, Mewa Singh and Dharamjit Singh against the same was dismissed.

5. Having heard the learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the petitioner has not specified the khasra number pertaining to the land where the

alleged incident occurred. Even when he stepped into the witness box as PW2, he could not specify the khasra number of the land he had taken on lease from the Gram Panchayat. In fact, he has admitted that the khasra girdawari for the said land was never recorded in his favour. Field Kanungo Singara appeared in the witness box as PW6 and stated that neither the petitioner nor Sher Singh were shown to be in possession of any portion of the disputed land. The evidence led by the prosecution does not ascertain on which piece of land the alleged incident took place or petitioner's possession over the same, which is an essential ingredient for the offence of criminal trespass.

6. A perusal of the record indicates that PW3-Avtar Singh was merely narrating the incident as was told to him by the petitioner and he in fact, is not an eye witness to the alleged incident. He was standing about 2 killas away from the scene of the alleged offence and could not state whether it was a full moon night so as to lend credibility to his account. It is improbable that identification of all the accused was done merely in the light of the tractors' headlights from one hand half/two killas away. Further, neither any tractors were taken into possession nor there is any description available for the same. The alleged weapons wielded by the respondents-accused have not been produced in Court either. As such, the prosecution has miserably failed to prove its case beyond reasonable doubt.

7. 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.

8. 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.

(HARPREET SINGH BRAR)
JUDGE

February 09, 2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No