

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-2664-2018(O&M)

Date of Decision:-05.03.2024

Mukhtiar Singh.

.....Petitioner.

Vs.

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jashandeep Singh Sandhu, Advocate &
M. Gautam Bhardwaj, Advocate Amicus Curiae
for the Petitioner.

Mr. Mohit Saroha, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioner-complainant against the judgment dated 08.09.2017 passed by the Additional Sessions Judge, Bathinda whereby the judgment of acquittal dated 24.10.2016 passed by Judicial Magistrate Ist Class, Bathinda has been upheld.

2. The brief facts of the case are that the FIR in question came to be registered at the instance of complainant Mukhtiar Singh who stated that the sons of his deceased brother Mall Singh and certain other persons had cultivated his land which had been partitioned about 60 years ago thereby committed the offences in question.

On conclusion of the investigation the report under Section 173(2) Cr.PC was submitted and on culmination of the Trial all the accused were acquitted by the court of Judicial Magistrate Ist Class, Bathinda vide

judgment dated 24.10.2016.

3. The petitioner-complainant Mukhtiar Singh preferred an appeal before the Court of Additional Sessions Judge, Bathinda and the said appeal came to be dismissed vide judgment dated 08.09.2017.

4. The aforementioned judgments are under challenge in the present revision petition.

5. The Counsel for the petitioner contends that the courts below had erred in not considering the evidence of PW-1 Mukhtiar Singh and PW-2 Labh Singh who had proved the case of the prosecution beyond any reasonable doubt. The Courts below had not considered the fact that the land on which the alleged occurrence took place was of the petitioner, the same having been partitioned between the parties 60 years ago. The findings of the Trial Court and lower Appellate Court were totally perverse and based on conjectures and surmises. He, therefore, contends that both the judgments were liable to be set aside and the respondent nos.2 to 9 were liable to be convicted for having committed the offences in question.

6. The Counsel for the State on the other hand contends that there was absolutely no evidence to suggest that a partition had taken place 60 years ago. As there was no evidence of the partition having taken place, the question of attempted trespass did not arise. He, therefore, contends that no fault could be found in the judgments of the Trial Court and the lower Appellate Court and the present petition was liable to be dismissed.

7. I have heard learned Counsel for the parties.

8. A perusal of the file would reveal that there is absolutely no evidence on record to suggest that a family partition had taken place 60 years ago. No such information of a partition was ever reported to the Patwari for incorporation in the revenue record. In fact, the revenue record

for the year 2011-13 would show that both the parties were co-owners in possession over the joint Khata. PW-4 Hans Raj, Patwari had already deposed to the effect that the land in question was a joint Khata. PW-2 Labh Singh in his cross examination admitted that a case for partition was pending between the parties which clearly implies that the land was still joint and had not yet been partitioned. Once the land was unpartitioned the question of a co-sharer being guilty of cultivating the joint land does not arise, as a co-sharer in joint possession has equal interest in every inch of the land until a partition takes place and cannot be held to be a trespasser. Further the conduct of the petitioner/complainant-Mukhtiar Singh and Labh Singh of having seen the occurrence and remaining silent on the night intervening 5/6.5.2014 till 15.07.2014 i.e. the date of recording of the FIR creates a serious doubt in the prosecution case. No photographs of the alleged occurrence regarding cultivation of land by tractors has come on record. Thus the prosecution has miserably failed to prove on record that the accused/respondent nos.2 to 9 made an attempt to take forcible possession of the land.

10. In view of the above discussion, I find no ground to interfere with the well reasoned judgment of acquittal recorded by the Judicial Magistrate Ist Class, Bathinda which has been upheld by Additional Sessions Judge, Bathinda. Resultantly, the revision petition stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

March 05, 2024
Vinay

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