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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-2113-2017

Reserved on: 25.03.2025

Pronounced on: 08.04.2025

Dharam Singh

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukesh Rao, Advocate
for the petitioner.

Mr. Arun Kumar Singla, AAG, Haryana.

Mr. J.S. Toor, Advocate
for respondent No.3.**HARPREET SINGH BRAR, J.**

1. The present revision petition has been filed for setting aside the impugned judgment dated 06.04.2017 passed by the learned Sessions Judge, Rewari, vide which the judgment of conviction dated 19.07.2016 and order on quantum of sentence dated 21.07.2016 passed by the learned Sub Divisional Judicial Magistrate, Kosli, in case bearing FIR No.51 dated 03.08.2012 under Sections 447/506 of IPC registered at Police Station Jatusana, have been set aside and the respondents no. 2 and 3 have been acquitted and fine paid by them was ordered to be remitted back.

2. The FIR (*supra*) was registered based on the statement of the complainant/appellant by alleging that he has two married daughters who are residing in their matrimonial homes. He also has two brothers, namely Ugarsain and Satya Prakash. Further, the father of the complainant distributed land amongst the complainant and his brothers around 30 years ago and since then,



the complainant is cultivating his land as per his share. It is further alleged that in November, 2011, around 08 months back, accused/respondent No.3, namely, Shekhar son of Satya Prakash, working as guard in Forest Department, took the possession of the land bearing No.59/24 which rightfully belongs to the complainant. Resultantly, the complainant moved a complaint and Shekhar apologized and gave in writing that he would not repeat such an act in future. Thereafter, accused/respondent No.3 repeated this act and again took the possession of the same land and when the complainant objected to this, accused/respondent No.3 extended threats to him, on account of which, the complainant approached the police station Jatusana but no action was taken against the accused. Moreover, accused/respondent No.2, namely, Sushil son of Ugarsain, forcibly occupied another piece of land by ploughing it and raising a hedge over land bearing No.40/1/2. Thereafter, a complaint was filed but no action has been taken against the accused persons.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, the learned Court below has opined that the claim of the complainant of trespassing and threats by the accused/respondents is doubtful and there is no strong evidence to support the accusations. The real issue is about the use of land jointly owned by both the parties and the proper solution is to divide the land and meanwhile, both parties are considered to have equal rights to the land, so no one can claim that the other is trespassing. Due to lack of evidence, no criminal charges can be proven. Thus, learned Court below has rightly acquitted the accused persons/respondents as the prosecution has failed to prove its case beyond the shadow of reasonable doubt.



4. It is a settled principle of law that a co-sharer cannot be held guilty of criminal trespass under Section 447 IPC in relation to joint, undivided property, unless there is evidence of ouster or exclusive possession recognized through lawful partition. In ***Gurcharan Singh Bansal v. State of Punjab, CRM-M-42406-2015***, and, ***Jagroop Singh and others v. State of Punjab and others, CRM-M-26766-2010***, this Court quashed FIRs under Section 447 IPC, holding that entry by a co-sharer on joint land, even if in possession of another co-owner or purchaser, does not amount to criminal trespass unless partition is finalized. This view has been consistently reaffirmed in ***Karamjit Kaur Singh v. State of Punjab, 2014(7) RCR (Criminal) 1201***, and ***Rai Singh v. State of Haryana, 2013(5) RCR (Criminal) 822***. Therefore, in the present case, where the parties are co-sharers and the property remains unpartitioned, no offence under Section 447 IPC is made out. This principle was categorically upheld, and the same was earlier discussed by Division Bench of this Court in a very detailed judgment in ***Sant Ram Nagina Ram v. Daya Ram Nagina Ram AIR 1961 Pb. 528***, which were reiterated by Full Bench of this court in ***Bhartu v. Ram Sarup, 1981 PLJ 204***, where in the following propositions, *inter alia*, were settled:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law possession of all even if all but one are actually out of possession.

3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the



ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

7) under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of other except by filing a suit for partition.”

4. 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. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (*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 of *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.



5. 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 Court below which warrants interference by this Court. As such, there is no merit in the present revision petition and hence, the same is hereby dismissed.

6. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

08.04.2025

Neha

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