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

CRR-633-2017

Date of decision: 19.02.2025

LOKENDER KUMAR SAINI

..Appellant

Versus

STATE OF HARYANA & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Arun Sharma, Advocate
for the petitioner.

Mr. Namit Khurana, Advocate for respondent No.2 to 6.

Mr. Rupinder Singh Jhand, AAG, Haryana.

HARPREET SINGH BRAR, (ORAL).

1. This revision petition has been filed by the petitioner against the judgment of acquittal dated 03.03.2015 passed by learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri and the said judgment was upheld by learned Sessions Judge, Rupnagar vide judgment dated 05.11.2016.

2. The case of the prosecution is that complainant Lokender Kumar Saini has been in possession of Luxmi Nursery as tenant for the past 9-10 years under accused Sarwanand at the rental of Rs.4,500/- per month. Two days before 23rd September, 2008, accused Sarwanand, Deepak and Gopal called him to their room and asked him to vacate the land. The complainant told them that his plants worth Rs.20-25 lakh were standing in the nursery, therefore, he needed 2-3 years time to vacate. Accused No.1 to 3 got enraged and asked him to vacate within two days failing which they will get forcible possession. On 22nd September, 2008, the complainant went back home after finishing his work at the nursery leaving his nephew Rajiv,

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Anuj alias Khali, Anuj, Amit, a servant and the servant's wife there. At about 10:00/10:30 PM, all the accused armed with deadly weapons attacked the nursery. On receiving information from the neighbours, the complainant rushed to the spot and saw the accused giving beatings to those present there. In an instant, accused No. 1 to 3 caught hold of him by neck. They were about to beat him but he was rescued by those present around. The accused cut the plants with swords and removed the entire material in two trolleys which they had brought along. The complainant went to Police Post, Rampura. Some police officials accompanied him to the spot. They saw the scene and asked the accused not to cause any damage to the nursery. Both the parties were told to come to Police Station in the morning. However, at about 12:00/12:30 midnight, the accused again attacked the nursery and removed the remaining material including a cow and calf. While leaving, the accused threatened that in future if the complainant or his relatives venture near the nursery they would be killed. The complainant filed the complaint and on 27.09.2008 a case under Sections 148, 149, 323, 379, 427, 452 and 506 of Indian Penal Code was registered.

3. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that learned Court below has opined that there is no documentary evidence on record to show that the complainant was in exclusive possession of the said nursery. It has been admitted by the complainant that it is the accused No.1 who is the owner of the said nursery. Since there is no document on record qua possession of complainant over the suit property, the question that the accused No.1 being the owner of the same entered in the nursery does not

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make out any offence under Section 452 of IPC. As regarding Section 379 of IPC is concerned, there is also no evidence on record that the complainant was in possession of one cow and a calf as alleged or that the same has been stolen by the accused persons. As regarding Section 427 of IPC, it was for the prosecution to prove on record that the complainant was in possession of plants worth Rs.20/25 lacs as alleged and that same have been destroyed by the accused persons. No documentary evidence has been led on record by the complainant to show that the plants kept by him were worth Rs.20/25 lacs as alleged. Moreover, accused being the owner of the nursery cannot be held guilty of causing damage to his own property. The version of the complainant do not find corroboration from any independent corroboration and hence appears to be doubtful. Thus, viewing these undisputed facts, learned Court below rightly acquitted the accused.

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 passed in **State of Haryana Vs. Ankit and others**



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

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

19.02.2025

Poonam

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No