



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

**236**

**CRR-2376-2022 (O&M)**

**Date of decision: 10.02.2026**

Om Parkash

...Petitioner

VERSUS

State of Haryana & others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present :- Mr. Mandeep Singla, Advocate for the petitioner.

Mr. Onkar Singh Wahla, Sr. DAG, Haryana .

\*\*\*\*\*

**VINOD S. BHARDWAJ, J. (Oral)**

The instant revision petition has been preferred against the judgment dated 11.11.2021 passed by the Court of Sessions Judge, Sirsa whereby the appeal preferred by the respondents against the judgment of conviction dated 02.09.2021 and order of sentence dated 06.09.2021 passed by the Judicial Magistrate First Class, Ellenabad in criminal complaint bearing CIS No.COMI-63-2015 titled '*Om Parkash Vs. Om Parkash and others*' had been allowed and the respondents were acquitted of the charge framed against them.

2. Briefly stated, the present complaint was instituted by Om Parkash, who stated that his father was suffering from mental instability and that the respondents—accused, taking undue advantage of his father's mental incapacity, induced him to execute an agreement to sell in respect of 12 Kanals of agricultural land, upon which a dhani had been constructed by the complainant. Upon learning of the said agreement, the complainant instituted a civil suit for permanent injunction against Kashmiri Lal, which is stated to be pending before the Court of the learned Additional Civil Judge

(Senior Division), Ellenabad. It is further alleged that on 29.04.2014, accused Om Parkash son of Modan Ram, Anil Kumar son of Om Parkash, and Jaswant @ Lala Patwari son of Modan Ram visited the dhani and threatened the complainant to vacate the premises along with his family, asserting that they had purchased the land and warning that failure to do so would result in dire consequences, including elimination. On account thereof, Manoj Kumar, brother of the complainant, approached the Kariwala Police Post to lodge a complaint. However, it is alleged that when he reached the police post, the accused were already present and, in the presence of police officials, abused him, snatched his complaint, and tore it into pieces. Though a subsequent complaint was allegedly submitted to senior police authorities, no action was stated to have been taken. The complainant further alleges that on 12.05.2014 at about 8:00–8:30 P.M., all the accused arrived at the dhani in two tractors one Sonalika and one Swaraj 855 armed with lathis and dandas. Upon reaching the spot, accused Anil Kumar and Jaswant @ Lala Patwari raised a lalkara, calling upon the complainant and his family to come out. When the complainant and his family members attempted to pacify them on the ground that a civil suit was pending, the accused allegedly became aggressive. It is specifically stated that Jaswant @ Lala Patwari inflicted a lathi blow below the left knee and on the back of the right leg of the complainant. Accused Om Parkash is stated to have struck a lathi blow on the complainant's left knee, while accused Anil Kumar dealt lathi blows on his right elbow, right leg, and right thigh. When Manoj Kumar intervened to rescue his brother, he too was assaulted with lathi and danda blows, resulting in injuries to his elbow, lower back,

left shoulder, right knee, left index finger, right little finger, and right knee. On raising alarm, the complainant's mother, Nirmala Devi, and Mamta @ Saroj, wife of Manoj Kumar, reached the spot and intervened, whereupon the accused fled. Before leaving, they are stated to have threatened to eliminate the complainant and his family at the next available opportunity. Thereafter, Mangat Ram arranged a vehicle and the complainant was taken to CHC Rania, from where he was referred to General Hospital, Sirsa. An X-ray examination was conducted, which revealed a fracture in the complainant's left leg. It is further alleged that the police conducted only a perfunctory investigation and, in collusion with the accused, initiated proceedings under Sections 107/151 Cr.P.C. instead of registering an appropriate case, thereby compelling the complainant to institute the present complaint. A report under Section 202 Cr.P.C. was thereafter sought, and upon receipt of the same, the learned Court proceeded in accordance with law.

3. On completion of the preliminary evidence, the respondent-accused were summoned vide order dated 14.05.2019 to face trial for commission of offences punishable under Sections 323 & 325 read with 34 of the Indian Penal Code, 1860. The complaint was dismissed against accused No.4 to 6 i.e. Mesar Devi wife of Om Parkash, Bimla wife of Jaswant @ Lala Patwari and Surjeet son of Jaswant @ Lala Patwari under Section 203 Cr.P.C.

In pre-charge evidence, the complainant examined as many as six witnesses including the doctor who had conducted the X-ray examination and Manoj Kumar, who supported the version of the complainant on all

material particulars. The charge was thereafter framed against the respondent-accused persons vide 27.01.2020 for commission of offences under Sections 323 & 325 read with 34 Indian Penal Code, 1860.

4. The defence counsel suffered a statement on 27.01.2020 to the effect that he wanted to cross-examine only the private witnesses. Later, vide statement dated 03.02.2020, counsel stated that he does not want to further cross-examine the private respondents namely, Mamta-PW3 and Nirmala Devi-PW4 and petitioner-Om Parkash was cross-examined further. The other injured private witness, namely, Manoj Kumar-PW2 did not appear in evidence. The same was thus closed.

5. The incriminating evidence was put to the respondent-accused and their statement was recorded under Section 313 Cr.P.C. The accused pleaded false implication and denied the allegations. They tendered the following documents in their support:-

- a. Ex.D1 Certified copy of plaint of civil suit titled Manoj Kumar and another Vs. Kashmiri Lal and Ors.
- b. Ex.D2 Certified copy of written statement of defendant No.1 in civil suit titled Manoj Kumar and another Vs. Kashmiri Lal and Ors.
- c. Ex.D3 Certified copy of order dated 08.09.2014 on stay application passed in civil suit titled Manoj Kumar and another Vs. Kashmiri Lal and Ors.
- d. Ex.D4 Certified copy of order dated 25.04.2016 for withdrawing the civil suit titled Manoj Kumar and another Vs. Kashmiri Lal and Ors.

e. Ex.D5 Certified copy of sale deed No.3638 dated 19.12.2013.

f. Ex.D6 Certified copy of sale deed No.3537 dated 19.12.2014.

6. On hearing the arguments of the respective parties, the Judicial Magistrate First Class, Ellenabad vide order dated 02.09.2021 convicted the accused for commission of offence under Section 323 and 325 read with Section 34 of the Indian Penal Code, 1860. Vide order of sentence dated 06.09.2021, the respondents-accused were sentenced as under:

| Section(s) | Punishment                                                                                                                                                          |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| IPC 323/34 | 3 month simple imprisonment alongwith fine of Rs.500/-each, in case of non-payment of fine, the convicts shall further undergo simple imprisonment of 5 days.       |
| 325/34 IPC | One year rigorous imprisonment alongwith fine of Rs.1000/- each, in case of non-payment of fine, the convicts shall further undergo simple imprisonment of 10 days. |

7. Aggrieved of the aforesaid judgment of conviction and order of sentence, an appeal was preferred by the respondents-accused to the Court of Sessions. The matter was argued at length before the Court of Sessions and vide judgment dated 11.11.2021, the Sessions Judge, Sirsa allowed the said appeal and acquitted the respondents of the charges framed against them and set aside the judgment of conviction of 02.09.2021 passed by the Judicial Magistrate First Class, Ellenabad.

8. Aggrieved thereof, the present petition has been filed.

9. Learned counsel appearing on behalf of the petitioner has

contended that the learned Sessions Judge, Sirsa, fell into error in failing to properly appreciate the material available on record. It is submitted that sufficient evidence had been adduced to demonstrate that the property in question stood recorded in the name of the petitioner's brother and that the respondents were, in fact, the aggressors seeking to assert unlawful control over the land. It is contended that the nature and extent of injuries sustained by the petitioner, including the fracture in his left leg, were proved through medical evidence and the testimony of the official witnesses, as well as the documentary evidence placed on record, was neither challenged nor rebutted by the respondents. It is contended that in such circumstances once the injuries stood established and the petitioner's side was shown to be in ownership and possession of the property, they were legally entitled to protect the same. Thus, the finding recorded by the learned Sessions Judge, Sirsa, suffers from a patent legal infirmity. Learned counsel has further drawn attention to the Jamabandi for the year 2011–12, which reflects the ownership of Manoj Kumar, son of Kashmiri Lal, resident of Village Bani, Tehsil Rania, District Sirsa, who is the brother of the petitioner. It is also pointed out that the Civil Court had earlier granted an order of injunction restraining Kashmiri Lal and others from alienating the property and that an interim injunction against alienation was operating at the relevant time.

10. Upon being confronted with the record, learned counsel for the petitioner fairly concedes that the alleged order granting interim injunction has not been exhibited in evidence. He further also does not dispute that the application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure was dismissed by the learned Trial Court vide order dated

08.09.2014 (Exh. P-23).

11. I have heard learned counsel for the petitioner at length and have gone through the documents appended alongwith the present petition as well as the judgment passed by the Sessions Judge, Sirsa.

12. Before proceeding further into the matter, it is appropriate to make a reference to the reasons assigned by the Sessions Judge, Sirsa while acquitting the respondents-accused persons. The operative part of the judgment is extracted as under:

*"14. After hearing the rival submissions, I have given my thoughtful consideration to the same. It is an admitted fact that Kashmiri Lal sold his land to Mesar Devi wife of Om Parkash son of Modan Lal, vide sale deeds Ex.D5 & Ex.D6. As per the said sale deeds, Shri Kashmiri Lal handed over the physical possession of the land to the purchaser. There is nothing on record to show that wife & sons of Kashmiri Lal were in possession of the said agricultural land, or the dhani as alleged in the complaint. Simply because, Manoj Kumar & Om Parkash challenged the sale deed executed by their father Kashmiri Lal does not point towards the direction that they are in possession of the suit land, seeing the fact that their application under Order 39 Rules 1 & 2 C.P.C. vide Ex.D3 and even their father Kashmiri Lal filed contested written statement against his sons in the said suit vide Ex.D2. Moreover, the said civil suit is already withdrawn vide Ex.D4. All these facts point towards the direction that present complainant Om Parkash son of Kashmiri and his brother Manoj Kumar & other family members were not in possession and they are in fact the aggressor party, who tress-passed into the land of the purchaser Mesar Devi. Moreover, the possession of an agricultural land goes with the title, which is with Mesar Devi. Every land owner has a right of*

*private defence against any tress-passer, who tries to oust him from the same. There is nothing on record that present appellants/accused persons exceeded their right of private defence while exercising the same against the complainant party, seeing the fact that Om Parkash son of Modan Ram also sustained injuries in the said incident. Moreover, police investigation in case FIR No.186 of 2014, P.S. Rania vide police report under Section 173 Cr.P.C. shows that present complainant Om Parkash son of Kashmiri Lal along with his brother Manoj Kumar are charge-sheeted in the case and present appellants were found innocent during police investigation. Thus, I am fully satisfied with all the submissions made by Ld. Counsel for appellants/accused persons, as mentioned in para no.12 above.*

*15. In sequel to my above discussion, the present criminal appeal is hereby allowed and all the appellants/accused persons are hereby acquitted from the charges framed against them by setting aside the impugned judgment of conviction dated 02.09.2021. The bail bonds submitted by appellants/accused persons are hereby retained under Section 437-A Cr.P.C. Trial Court record along with copy of this judgment be sent back. File be consigned to the record room.”*

13. The specific case of the petitioner is to the effect that he was a co-owner in joint possession of the agricultural land in question and that Kashmiri Lal had been restrained from alienating the land in favour of the respondents—accused as on the date of the alleged occurrence. However, a perusal of the judgment rendered by the Sessions Judge, Sirsa, reveals that Kashmiri Lal, the father of the petitioner, had executed sale deeds Exh. D5 and Exh. D6 dated 19.12.2013 and 19.12.2014 respectively, in favour of Mesar Devi, wife of Om Parkash (son of Modan Ram). The recitals



contained in the said sale deeds specifically record that physical possession of the land had been delivered to the vendee at the time of execution. Notwithstanding the emphatic submission advanced on behalf of the petitioner that he continued to be in cultivating possession of the agricultural land and the dhani constructed thereon, no documentary evidence has been brought on record to substantiate such a claim. There is also no reference to any material to demonstrate his actual cultivating possession or control over the property, as asserted. The mere institution of a declaratory suit by the petitioner along with his brother Manoj Kumar, coupled with an order restraining their father from alienating the suit land, does not, by itself, lead to an inference that the petitioner was in possession of the property. Nor can such an order be construed as a direction maintaining status quo with respect to possession, in the absence of specific findings to that effect.

14. It is further evident that the petitioner failed to substantiate his claim against his father, particularly in view of the fact that the application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure stood dismissed. Kashmiri Lal had filed a detailed written statement in the civil proceedings, which has been exhibited as Exh. D2. The said civil suit was ultimately withdrawn by the petitioner and his brother Manoj Kumar, as reflected in Exh. D4. These circumstances lend support to the conclusion that the petitioner and his brother were not in possession of the land at the relevant time and that possession had already been delivered to the respondents—accused pursuant to the registered sale deeds. It was further noticed that the incident in question occurred on agricultural land and, *prima facie*, the petitioner had entered upon the said land without any subsisting

legal right. In that view of the matter, the petitioner was held to be a trespasser and the initial aggressor. Consequently, the respondents–accused were held entitled to invoke the right of private defence to protect their property. The injury sustained by the petitioner has been classified under Section 325 of the Indian Penal Code and was not found to be indicative of an excessive use of force beyond what was necessary in the circumstances.

15. It is a well-settled principle under the Indian Penal Code that a person is entitled to protect his possession of property by using such force as is reasonably necessary for that purpose. The right of private defence of property, even to the extent of causing bodily harm, is statutorily recognized under Section 104 of the Indian Penal Code, 1860, which reads as under:

***”104. Right of private defence of property against theft, mischief or criminal trespass, not extending to causing death.—***

*The right of private defence of property against theft, mischief or criminal trespass does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing of any harm other than death.”*

16. Counsel for the petitioner has also failed to refer to any such documents on the basis whereof his actual possession and ownership over the land could be established. In the absence of such evidence, the mere fact that the petitioner sustained injuries in the course of the incident cannot, by itself, form the basis for recording a conviction. The material on record rather indicates that the respondents–accused claim title and possession by virtue of a duly registered sale deeds executed in their favour, coupled with delivery of possession by Kashmiri Lal, the father of the petitioner. In such

circumstances, the presumption of lawful possession in their favour cannot be lightly displaced. It is also an admitted position that the civil suit instituted by the petitioner seeking to restrain his father from alienating the suit property was ultimately withdrawn. Furthermore, the application for interim relief was declined by the competent Civil Court on 19.12.2014. These factors further weaken the petitioner's claim of subsisting legal right or possession over the property at the relevant time.

17. It is further borne out from the record that Manoj Kumar, the brother of the petitioner and an injured eye-witness to the occurrence, entered the witness box and was subjected to cross-examination. The tenor of his testimony, when tested in cross-examination, materially affects its credibility and does not inspire confidence to the extent sought to be projected by the petitioner. Significantly, Kashmiri Lal did not step into the witness box to support or corroborate the petitioner's claim. On the contrary, he had filed a contested written statement in the civil proceedings opposing the stand taken by the petitioner. This circumstance assumes relevance in assessing the rival claims relating to possession and title. Moreover, the registered sale deeds on record clearly recite that physical possession of the land had been delivered by Kashmiri Lal in favour of the respondents. The recitals therein, coupled with the absence of any cogent evidence to the contrary, indicate that the respondents were in settled possession of the property pursuant to the execution of the said instruments.

18. While exercising revisional jurisdiction, this Court does not sit as a Court of second appeal so as to undertake a fresh re-appreciation of the entire evidence on record. The scope of interference in revision is

circumscribed and narrow. It is well settled that the High Court, in exercise of its revisional powers, would interfere only where the impugned judgment is shown to suffer from patent perversity, manifest illegality, material impropriety, or a gross misappreciation of evidence resulting in miscarriage of justice. In the absence of such infirmities, the revisional Court would refrain from substituting its own view merely because another interpretation of the evidence may be possible.

19. No such circumstance or evidence has been referred to by the counsel for the petitioner during the course of his argument, hence, finding no inconsistency, illegality, perversity or impropriety, the judgment under challenge, the present petition lacks merit and is accordingly *dismissed*.

20. Pending application(s), if any shall stand disposed of.

(VINOD S. BHARDWAJ)  
JUDGE

10.02.2026  
Sumit Gusain

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