



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

230

CRR-1133-2016 (O&M)
Date of decision: 16.02.2026

RAMESH SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: - Mr. Vishavdeep Singh Rana, Advocate
As Amicus Curiae.

Mr. Mohit Kapoor, Senior DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

CRM-9507-2016

Prayer in the application is for condonation of delay of 35 days
in filing the revision.

For the reasons mentioned in the application, the same is
allowed and delay of 35 days in filing the revision is condoned.

CRR-1133-2016

Aggrieved of the judgments passed by the Judicial Magistrate
1st Class, Jalalabad acquitting the respondent(s) vide judgment dated
06.01.2015 and from the subsequent dismissal of the appeal by the

Additional Sessions Judge, Fazilka vide judgment dated 24.08.2015, the present petition has been filed.

2. Briefly summarized the facts of the present case registered on the statement of complainant Remesh Singh that in the intervening night of 24/25/11/10, all the accused formed an unlawful assembly and committed the offence of rioting and criminal trespass by entering into fields of complainant besides they all committed mischief by damaging the wheat crops of the complainant. Thereafter investigation was initiated. Statements of witnesses were recorded and after formal investigation of the case the challan was presented in the court.

3. On appearance of accused, copies of documents alongwith report u/s 173 Cr.P.C. were supplied to accused free of costs as envisaged u/s 207 Cr. P.C.

4. After hearing APP as well as the defence counsel, a *prima facie* case was found to have been made out against accused-respondents u/s 448/447/148/149 IPC. Respondents were charge sheeted accordingly. Contents of charge were read over to them in Punjabi to which they pleaded not guilty and claimed trial.

5. Onus to prove the case was on prosecution and to prove its case, prosecution examined complainant Remesh Singh as PW1, Remesh Singh s/o Balbir Singh as PW2, ASI Darshan Lal as PW3, Basti Ram Patwari as PW4, HC Harmit Lal as PW5, Sandeep Kumar PW6 and ASI Harkesh Kumar as PW7. Thereafter, APP closed the prosecution evidence.

6. After closure of evidence all incriminating circumstances were put to accused u/s 313 Cr. P.C. which they denied and pleaded innocence.

However, the accused-respondent(s) did not lead any evidence in defence

and closed defence evidence.”

7. The State had vehemently argued that the accused-respondent(s) had committed the offence of rioting and committed criminal trespass in furtherance of a common intention by entering into the premises of the complainant-petitioner and also caused damage to his wheat crops, which, such fact is fully corroborated by the prosecution witnesses, hence, the respondent-accused ought to be convicted.

8. The defence raised by the respondents herein was to the effect that PW-1 Ramesh Singh (Complainant) had admitted that he was informed about the occurrence and the Khewat No. 109, wherein the alleged occurrence took place, was jointly owned by complainant and the accused persons. The said fact was also admitted in the cross-examination of PW-4-Basti Ram Patwari who proved the Jamabandi and Khasra Girdwari Ex. PW/4 alongwith with the copy of the site plan. It was also argued that the investigation conducted by the Police officials, failed to notice that the photographs were not of the actual place of occurrence and it did not specify the rectangle number or killa number of the land concerned. Further, the eye-witness Ramesh Singh, son of Balbir Singh admitted to having witnessed the incident while ploughing his land from a distance of about 10 killas. Further submission has been raised that there was an inordinate delay of more than 15 days in lodging of the FIR in the present case.

9. Upon consideration of the respective arguments, the trial Court recorded its finding and concluded that the prosecution failed to prove its case beyond reasonable doubt and also failed to explain the delay in lodging of the FIR. The operative part of the judgment passed by the Judicial Magistrate reads thus:-

14. **After hearing the rival contentions of APP and defence counsel and from perusal of the material on record** the point for the determination which emerges before this court is that

Whether all the accused formed an unlawful assembly and committed the offence of rioting and committed criminal trespass by entering into the fields of complainant besides committed mischief by damaging the wheat crops of the complainant?

15. The meticulous scrutiny of the depositions of the prosecution witnesses especially i.e. PW1, PW2, PW3 and PW4 and the entire other material available on record makes it evident that the prosecution has miserably failed to prove its case beyond any reasonable doubt. The major factor which arrestingly renders the case of the complainant doubtful is the there is a considerable delay of fifteen days in lodging the FIR as the alleged occurrence took place on 24/25.11.10 and there is no justification of any kind qua delay in lodging the FIR against the accused and it is a material lacuna which raises doubt about the authenticity of the contents of the FIR because no prosecution witness has ever deposed that conversation for compromise took place meaning thereby it can be easily said by no stretch of any imagination that the FIR could be result of due deliberations, consultations and confabulations and therefore, no Importance could be attached to the prosecution version as disclosed on the ground that the possibility of utilization of the time, to concoct the story and false implication of the accused wholly or partly could not be ruled out.

16. Further, there is no direct evidence to connect the accused with the commission of the offences with which they have been charged particularly, Basti Ram Patwari

while appearing as PW4 has categorically proved the land comprised of khewat No. 109 in which the alleged occurrence has taken place is jointly owned by the complainant and the accused party. The application moved by the complainant is also not on the judicial file as is evident from the testimony of IO ASI Darshan Lal PW3 which outrightly wipes out the prosecution story.

17. Another very important factor which bodaciously bends the case in favour of the accused is the testimony of IO ASI Darshan Lal PW3 wherein he admitted that the complainant produced before him the photographs pertaining to the occurrence which were not actually clicked in his presence and no rectangle number of kill number was so mentioned on the photographs besides the complainant had himself admitted before the IO that no occurrence took place in his presence, all these factors creates suspicion over the prosecution story as it cannot be ascertained as to whether the photographs so produced by the complainant before the IO were actually belonging to the land in question or not.

18. Most Importantly, the testimony of the complainant is untrustworthy as in one portion, the complainant Ramesh Singh while appearing as PW1 has himself admitted that fact of getting information about the Incident by eye witness namely Ramesh Singh s/o Balbir Singh whereas in later portion of his statement, he deposed that he himself has witnessed the occurrence from the distance of 10-15 karams which itself clearly casts doubt in the mind of the court with respect to the authenticity of the deposition of the complainant.

19. Furthermore, the alleged eye witness namely Ramesh Singh s/o Balbir Singh has allegedly witnessed the accused while ploughing the land of a distance of 10 killas and by no stretch of Imagination, it can be belleved in any manner that in the night time one can see/identify

anybody from a distance of 10 killas. This fact itself clinches away the case from the prosecution.

20. Moreover, the testimony of PW1 Ramesh Singh complainant is based on hearsay evidence and it cannot be taken into account as the hearsay evidence is not direct evidence as it comes indirectly that is to say it comes not from the knowledge of the person who deposes but through some other person and in the present case he was narrated about the incident by alleged eye witness namely Ramesh Singh s/o Balbir Singh and astonishingly, this eye witness has allegedly witnessed the occurrence at a distance of 10 killas which itself creates suspicion over the prosecution story.

21. No evidence has been brought on record by the prosecution to prove the exclusive possession of the complainant over the land in dispute rather the land comprised of Khewat No. 109 in which the alleged occurrence has taken place is jointly owned by the complainant and the accused party as is evident from the testimony of PW4 Basti Ram Patwari.

22. The prosecution is cast with very serious duty to bring on record quality evidence to substantiate its allegation against an accused in the absence thereof. It cannot seek conviction of any person as it becomes difficult for the court to pronounce a person guilty in the absence of fool-proof evidence nailing the guilty by the accused person.

23. So taking into account the totality of facts and circumstances and the material available on record court is of the considered view that prosecution has miserably failed to prove its case and benefit of doubt is given to accused. Accused are acquitted of the charge framed against them. Accused and sureties are hereby discharged from their personal bonds and surety bonds respectively. File be consigned to the record room.”

10. Aggrieved thereof, Appeal No. 50 dated 02.02.2015 was preferred before the Court of Sessions. Vide judgment dated 24.08.2015, the said appeal was dismissed by the Additional Sessions Judge, Fazilka by observing as under:-

13. After perusing the entire file meticulously and hearing the respective submissions of the learned counsel for the parties this court agrees with the contentions raised by the counsel for the respondents and is of the considered opinion that the appellant has failed to point out anything favourable to him in the entire evidence on the record which would lead to the conclusion that the appellate court can take the different opinion from the trial court while appreciating the evidence on the record. Further, no illegality, error or any infirmity has been pointed out in the record which leads to the conclusion in favour of the appellant.

14. In this case the whole of the prosecution case revolves around the statement of complainant Ramesh Singh who has given his statement to the police on 9.12.2010 Ex.P1 stating that on 26.11.2010 he had earlier given one application disclosing that in the intervening night of 24/25.11.2010, accused Chand Singh, Hansa Singh, Jarnail Singh, Gurmej Singh, Durgo Bai, Naino Bai, Banta Singh and Gurbachan Singh damaged his wheat crops by their tractor bearing no.HYN-7403 and also tried to encroach his land. The said land was purchased by him from Piara Singh son of Buta Singh measuring 13 kanals 15 marlas vide registered sale deed dated 27.10.1992. Thereafter on 10.12.2010, he had made supplementary statement to the police (Ex.P2) stating that his neighbourer Ramesh Singh son of Balbir Singh informed him and when they reached at the site the accused fled away from the site of occurrence. Now, if the first statement and the second statement of the

complainant is deeply scrutinized then it would be crystal clear that it is not believable that all the accused could have damaged the wheat crops with one tractor and it is also not possible that on seeing the complainant they could run away abruptly as it was not mentioned how, and in what manner they ran away from the spot because the presence of tractor with them creates serious doubt in the story put forwarded by the complainant. Complaint Ramesh Singh in his cross-examination stated that he was observing the incident from the distance of 10/15 Karams and both were standing at a distance due to the fear. PW-2 Ramesh Singh son of Balbir Singh stated in his cross-examination that he had seen the accused at distance of 10 Killas and found that the accused were under the influence of liquor. He has also stated that accused were raising the Lalkaras that they will kill, if anybody would stop them and similarly PW-1 also stated this version in his examination-in-chief which has not been incorporated in his earlier statement.

15. Now, if the statement of PW-4 Basti Ram Patwari is taken into account then it would leave no doubt that Khewat no.109 is the joint Khewat of complainant as well as accused and the dispute regarding the correction of Girdawari is pending between the parties, thus it has become evident that the alleged land where the alleged occurrence is shown does not exclusively belongs to the complainant. Also, the photographs produced by the prosecution on the file does not indicate as to whether these photographs are belonging to the same place where the alleged occurrence took place and accordingly these photographs cannot be connected with the alleged incident. Therefore the offence of trespassing is not established in the present case by the prosecution as per the ratio of Rai Singh (Supra). Also, no evidence was led by the complainant for proving the loss as alleged by him.

16. *The complainant in his statement stated that he had earlier given an application to the police on 26.11.2010, but no such complaint or application was brought on the record by the police and it appears that the complainant has given wrong information just to cover the delay in the present case as allegedly first time the matter was reported to police on 9.12.2010 and there is an unexplained delay of 14 days in informing the matter to the police which is fatal to the case of the prosecution, if the improvements made by the prosecution as is evident from the statements are taken into consideration. It has become evident that there is a pending civil dispute and other criminal litigation between the parties as stated by PW-1, therefore, it cannot be ruled out that the present FIR is the result of due deliberations, consultations and confabulations as rightly observed.*

17. *Apparently, from the above discussion there are two views possible and there is double presumption in favour of the accused. Firstly, the presumption of Innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

18. *The statements of police officials would not give any benefit to the complainant party because the police had conducted the investigation related to the alleged occurrence. Ultimately, there are two reasonable conclusions are possible on the basis of the evidence on the record and as per the settled law the appellate court should not disturb the findings of acquittal recorded by the trial court as held by apex court in Dinesh Kumar v. State through Inspector and another 2015 (1) RCR*

(Criminal) and Vinod Kumar v. State of Haryana 2015 (1) RCR (Criminal) 532.

19. *Therefore, the findings so recorded by the learned trial court are correct findings with deep analysis of evidence on record and this court does not see any illegality in the findings recorded by the learned trial court and the same are hereby affirmed. Resultantly, the present appeal is ordered to be dismissed being without merit. Record of the trial court be sent back and that of appeal be consigned to the Record Room.”*

11. Hence, the present revision petition has been filed.

12. Counsel for the petitioner chose not to appear in the matter on despite repeated adjournments, hence, an Amicus was appointed to assist this Court.

13. Learned Amicus contends that judgments suffer from error because of the failure to appreciate the testimony of the prosecution witnesses which establish the factum of the respondent-accused having trespassed into the land of the petitioner and having caused damage to the standing wheat crop.

14. He, however, is not in a position to refer to any evidence on the basis whereof the findings recorded concurrently by both the Courts could be held to be perverse, illegal or not borne out from a meaningful recording of the record and evidence. He is also not in a position to dispute that the revenue record which is exhibited before the Court shows that the land was jointly owned by the petitioner and the respondent-accused persons.

15. In the absence of any evidence establishing that the complainant-victims were in exclusive possession of the land, the offence of trespass could not be *prima facie* made out against a joint owner. Further,

learned Amicus is also not in a position to offer any explanation for the delay of 14 days in lodging of the FIR. Despite the incidents having taking place on 24/25.11.2010, the FIR was lodged only on 09.12.2010.

16. When the High Court exercises its revisional jurisdiction, it does not enter into re-appreciation of the entire evidence and interfere with the judgment under challenge unless some patent illegality, perversity or impropriety of procedure, law or in the conclusions drawn against the record, the judgment passed concurrently by both the Courts is not be ordinarily interfered with.

17. Finding no illegality, perversity or impropriety, the present petition is dismissed.

FEBRUARY 16, 2026

Vishal Sharma

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No