

PBHOC10000582016



Presented on : 25-01-2016
Registered on : 28-01-2016
Decided on : 21-02-2022
Duration : 6 years, 0 months, 27 days

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE
AT MUKERIAN, HOSHIARPUR
(PRESIDED OVER BY AMARDEEP SINGH BAINS)**

CHI/15/2016

State	Versus	1. Ram Lal, aged about 52 years, son of Rajinder Singh, r/o village Bhavnal, PS Hajipur, District Hoshiarpur. 2. Ramnik Singh, aged about 37 years, son of Pritam Singh, r/o village Bhavnal, PS Hajipur, District Hoshiarpur.Accused
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FIR No. 67 dated 09.10.2015,
Under Sections 447, 379, 34 of IPC
Police Station Hajipur,
Distt. Hoshiarpur.

Present: Shri Inderjot Singh, Ld. APP for the State assisted by Sh.
Raghubir Kumar, Advocate.
Accused on bail, represented by Shri Mandeep Sharma,
Advocate.

JUDGMENT:

1. Above named accused have been forwarded by SHO, Police
Station Hajipur, Distt. Hoshiarpur, to face trial for committing offence punishable
under Sections 447, 379, 34 of IPC in the above noted FIR.

2. The genesis of the present FIR can be traced to an application bearing No. 213-SP-Inv. dated 16.7.2015 moved by accused Ram Lal to Senior Superintendent of Police, Hoshiarpur against Joginder Singh, son of Watan Singh, r/o Patial, PS Mukerian, District Hoshiarpur, Bhajan Singh, son of Rattan Chand, r/o Gera, PS Hajipur, Tehsil Mukerian, District Hoshiarpur, Mohinder Singh, son of Ratan Singh, r/o village Bhavnal, PS Hajipur, District Hoshiarpur and Charanjit Singh, son of Dharam Pal, r/o Mukerian with respect to harassment caused to the above-said Ram Lal, despite stay order in his favour, wherein it has been submitted that applicant Ram Lal, son of Rajinder Singh is resident of village Bhavnal, PS Hajipur, District Hoshiarpur. He is having a dispute with subject cited persons in the Hon'ble Court of Sh. Jaswinder Pal, PCS, Civil Judge (Junior Division), Mukerian. In the said case, a stay order was passed in favour of applicant Ram Lal. But, despite the above-said stay order in favour of applicant, the subject cited persons by moving false application at PS Hajipur, are harassing the applicant. In their such application, the police of PS Hajipur calls them on day to day basis and harass there. The grievance of the applicant is not being heeded by the police of PS Hajipur. The land in dispute is ancestral property of applicant, which is under ownership of forefathers of the applicant for last 100 years. The above-said persons by gathering a lot of people are threatening the applicant and his family and are trying to illegally encroach upon the land of the applicant. By doing so, these persons are making disobedience of order of Hon'ble Court, as they do not care about the rule of law. It is further submitted that these persons are creating hurdle in the life of applicant and are extending threats towards the

children and woman of applicant. If any unpleasant thing happens with the family of applicant, these persons will be responsible for the same. Kindly take action into the matter.

3. On the said application, enquiry was conducted by Sh. Nanak Singh, IPS, Assistant Superintendent of Police, Sub Division Mukerian and in his enquiry report, it has been reported by said officer that after recording the statements of both parties as well as perusal of the documents placed before the enquiry officer, it was found that applicant Ram Lal alleges that he is having $\frac{1}{4}$ share i.e. land measuring 42 kilas out of total 1174 Kanals and 12 marlas land in land bearing Khatoni No. 93 and 94. Out of above-said land, land measuring 22 Kilas, applicant alleges that it had been sold by his forefathers to residents of his village namely Malkit Singh, son of Mehnga Ram, Dhanna and Parshottam sons of Maru, Yashpal son of Nanak Chand and brother of Yashpal and at present, he alleges to be owner of remaining 20 kilas of remaining land. Applicant has placed copies of orders pertaining to partition of above-said land by SDM, Mukerian and Divisional Commissioner (Revenue). During the course of enquiry, applicant was directed to place jamabandi with regard to his ownership of alleged khasra. But, he could not produce the same. The applicant had produced copies of stay order passed by Civil Courts at Mukerian, vide which, applicant obtained stay order in connection with land bearing Khatoni No. 94. On the other hand, as per their sale deeds and revenue record, Harbhajan Singh and Joginder Singh are owners of the land bearing khatoni No. 93. *It is further reported that after going through the statements of opposite parties namely Harbhajan Singh and others and record*

*produced by them in enquiry, it was found that on 08.1.2015, Harbhajan Singh purchased land measuring 1 Kanal 5 marla bearing Khata No. 45/93, Khasra No. 28/12/1 (2-18) from Mohinder Singh, son of Rattan Singh, r/o village Bhavnal. At that time, the said land was in possession of applicant Ram Lal, who sown Bajra crop in the above-said land. After registry, Harbhajan Singh asked applicant Ram Lal to hand over the possession of above-said land to him. At first, Ram Lal agreed to hand over the possession of above-said land. But, later on, under the influence of somebody, he denied to hand over the possession of above-said land to Harbhajan Singh. Accordingly, on an application moved by Harbhajan Singh, on 11.6.2015, demarcation with regard to land comprised in khasra no. 28//12/1 was conducted by the Revenue Department. In the demarcation, both parties alongwith respectables were present at the spot. After demarcation, the officials of the Revenue Department installed *kachi burjis*. After completion of demarcation proceedings, it was signed by Harbhajan Singh and respectables. But, Ram Lal and his wife denied to put their signatures on the demarcation proceedings. However, they gave their oral approval to the demarcation proceedings. Thereafter, on same day, Harbhajan Singh, in the presence of respectables, installed cemented pillars in the above-said purchased land of his and surrounded the same with barbed wire and took possession of his purchased land. It is further reported that on 24.6.2015, Joginder Singh son of Watan Singh, r/o village Patial who has purchased his land and the said land was also in possession of Ram Lal and when the officials of the Revenue Department reached at the spot for demarcation, he created hindrance to allow them from*

conducting demarcation proceedings. On 25.6.2015, in the evening, applicant Ram Lal and his cousin Ramnik Singh son of Pritam Singh destroyed and dismantled the pillars erected by Harbhajan Singh and stole away the barbed wires of Harbhajan Singh. When they were stopped by Govind Singh, son of Joginder Singh, r/o village Marule, from doing so, they hurled abuses at him. As per the demarcation report dated 11.6.2015, it is very much clear that Harbhajan Singh has purchased land measuring 1 Kanal and 5 marlas of land bearing Khasra No. 28/12/1 (2-18). In which, he erected cemented pillars and surrounded the above-said land with barbed wires but on 25.6.2015, applicant Ram Lal alongwith Ramnik Singh dismantled the pillars installed by Harbhajan Singh and stole away the barbed wires and again took into illegal possession of the land purchased by Harbhajan Singh. Accordingly, the above-said enquiry officer recommended for registration of FIR under Section 447, 379, 34 of IPC. During the investigation the accused were arrested. After completion of investigation, challan was presented in the court against the accused under sections 447, 379, 34 of IPC.

4. Upon the presentation of challan, copy of the same was supplied to the accused, free of costs, as required under Section 207 Cr.P.C.

5. On the basis of prima facie case, charge under Sections 447, 379, 34 of IPC was framed against the accused. The contents of charge were read over and explained to accused in simple language to which they pleaded not guilty and claimed trial.

6. To prove its case, prosecution examined Harbhajan Singh as PW-1

who deposed that he is working as a Mason. In the year 2005, he purchased land measuring 1 Kanal and 5 marlas from Mohinder Singh situated at village Bhavnal. The mutation was sanctioned in his name. He further deposed that when, he purchased this land, Bajra crop was sown in that field by Ram Lal son of Joginder Singh as they took this land from Ram Lal on batai. Then accused Ram Lal assured him that within 15/20 days, he will cut the crop. But, when accused Ram Lal did not vacate the land, then demarcation was done by Patwari and Kanungo in the presence of respectable, Patwari and Kanungo demarcation was completed. At that time, Ram Lal was also present and burjies (pillars) were installed around his land, but Ram Lal did not append his signature on the demarcation report. He installed 10-12 pillars. Then after few days, Ram Lal alongwith his nephew removed the pillars and took the possession of his land forcibly. Further, he placed copy of sale deed in his favour as Ex. PW1/A and identified his signature at point X. Further, he identified accused Ram Lal and Ramneet Singh present in the court. Further, he proved his statement recorded by the police as Ex. PW1/B. In this case inquiry was conducted by ASP Nanak Singh, then FIR was registered against the accused. Further, he identified his signature over the demarcation report at point Y. In this way, accused has forcibly removed his pillars and barbed wire and forcibly took the possession of his land.

7. Thereafter, Govind Singh was examined as PW-2 who deposed that he is a Carpenter. In the month of June 2015, he alongwith Hoshiar Singh were going to village Handwal, as they were working in the house of Darbari Lal and were making his doors and windows. On 25.6.2015, when he alongwith Hoshiar

Singh were coming back and he dropped Hoshiar Singh and after dropping him when he was coming, he saw that Ram Lal, Ranjit Singh alongwith some ladies were removing the pillar and wire from the land of his father-in-law namely Harbhajan Singh. The said land was purchased by his father-in-law from one Mohinder Singh in village Bhavnal. Then, he approached accused person and inquired, as to why, they were removing the pillars from the land of his father-in-law. On which, accused persons gave him filthy abuses. Then, he came back and tried to convey the message on mobile phone, but line was busy. Then, he reached at village Gera and informed his father-in-law Harbhajan Singh. In this case inquiry was conducted. During inquiry his statement was recorded by ASP Nanak Singh which is Ex PW2/A. Further, he identified his signature at point Z. Further, he identified the accused present in the court.

8. Thereafter, Joginder Singh was examined as PW-3 who deposed that he is a Carpenter. He alongwith Mohinder Singh purchased land from Charanjeet Singh son of Dharampal in equal share. Further, he placed copy of sale deed as Ex. PW3/A. Then Mohinder Singh sold out 1 Kanal 5 marlas i.e. his share to Harbhajan Singh of village Gera and mutation was sanctioned on his name also and on the name of Mohinder Singh also. Demarcation was done by Patwari and Kanungo, but Ram Lal and Ramneek Singh had removed the pillars installed by Harbhajan Singh in his land. His land is also in possession of accused Ram Lal and Ramneek Singh. He had also installed the pillars and wire, but accused person had removed it from his land also and forcibly took into possession his land and land of Harbhajan Singh. Further, he proved his statement Ex. PW3/A

and identified his signature. Further, he identified the accused present in the court.

9. Thereafter, ASI Gurmeet Singh was examined as PW-4 who brought the summoned record and deposed that on 13-10-2015, he was posted as MHC at P.S. Hajipur and on that day ASI Jagat Singh deposited with him five cemented pillars six feet each. The case registered bearing FIR No. 67 dated 09-10-2015 and same were taken into possession under DDR No. 15 dated 13-10-2015. The copy of Register No. 19 as Ex. PW4A/A.

10. Thereafter, HC Gurvinderjit Singh was examined as PW-5 who deposed that arrest of accused Ram Lal and Ramnik Singh was made by ASI Jagat Singh on 13.10.2015 and deposed about arrest memo is Ex. PW5/A, personal search memo of accused Ram Lal Ex. PW5/B, personal search memo of accused Ramnik Singh Ex. PW5/C. Further deposed that one cement pillar was also recovered from accused Ram Lal vide recovery memo Ex PW5/D. Further, he identified the accused present in the court.

11. Thereafter, ASI Jagat Singh was examined as PW-6 who deposed that investigation of the present case marked to him on 09.10.2015 by SHO. He prepared the rough site sketch after visit on the spot Ex. PW6/B. He also deposed about deposed about arrest memo is Ex. PW5/A, personal search memo of accused Ram Lal Ex. PW5/B, personal search memo of accused Ramnik Singh Ex. PW5/C. Recovery was effected on 13.10.2015 and rough site sketch of place of recovery is Ex. PW6/C. Recovered cement pillars were taken into possession vide memo Ex. PW6/D. He further deposed about case property i.e. pillars Ex.

MO1 to MO5.

12. Thereafter, Uttam Singh, Retired Kanoongo, Halqa Hajipur was examined as PW-7 who deposed that on 11.6.2015, he prepared demarcation report as per the order of AC-II, Hajipur and proved the same as Ex. PW7/A.

13. Thereafter, HC Harjit Singh was examined as PW-8 who brought the summoned record and deposed that as per their record, Enquiry No. 213-SP dated 16.03.2015 was conducted by IPS Nanak Singh. Then, after the approval of SSP, Hoshiarpur, FIR was registered. The said enquiry report is Ex. PW8/A and he identified the signature of IPS, Nanak Singh and SSP, Dhanpreet Kaur.

14. Learned APP for the State gave up witnesses namely SI Goldy Viridi, SI Pardeep Singh, Joginder Pal, Halqa Patwari, Satish Kumar vide his statements. He tendered into evidence fard jamabandi for the year 2015-16 of village Bhavnal Ex. P1 and closed prosecution evidence.

15. After closure of prosecution evidence, statements of accused under Section 313 Cr.P.C. was recorded wherein all the incriminating evidence appearing in prosecution evidence was put to them. The accused denied all the allegations against them and pleaded innocence and false implication. They further stated that in fact, the land in dispute is joint land, where, they are in possession. In fact, complainant never installed any pillar in the above-said land. They moved application against S.P. Nanak Singh before SSP, Hoshiarpur and due to this reason, said officer got registered present FIR against the accused persons. They are still in possession of the land in dispute. This FIR has been registered by complainant just to force the accused persons to hand over their

possession of the land in dispute to the complainant party. A writ petition is pending before Hon'ble High Court for seeking direction to decide afresh the partition application to Assistant Collector, Mukerian.

16. During the course of defence evidence, the accused examined HC Tarsem Singh as DW-1 who brought the summoned record i.e. application no. SSP-431 dated 18.8.2015 moved by accused Ram Lal and Amrik Singh son of Pritam Singh and proved its attested copy as Ex. DW1.

17. Thereafter, Harjit Kumar was examined as DW-2 who brought the summoned record i.e. partition file of village Bhavnal titled as "Rajinder Singh etc. Vs. Balraj Singh etc." and deposed that the said case was instituted on 16.4.1999 in the Court of Assistant Collector 1st Grade, Mukerian and decided on 15.4.2021. Mode of partition was prepared in the present case were prepared on 21.12.1999. In the said mode of partition, there was a clause no. 4 according to which partition will be effected by keeping the possession intact. Khewat no. 12, khatoni no. 19 and khasra no. 28//13/1 (2-18) was also part of the said partition. Ram Lal, etc. are legal heirs of Rajinder Singh who was applicant in the present partition. Further, he placed attested copy of mode of partition as Ex. DW1/A. He admitted that Pritam Singh was also party in the partition mentioned above. He admitted that Ramnik Singh was impleaded as LR in the said partition case. He admitted that in the above mentioned partition case one Joginder Singh S/o Watan Singh was impleaded as party as per the application moved by him, he has purchased the share from one Charanjit Singh who was also co-sharer with the father of accused namely Rajinder Singh. He had seen the jamabandi for the year

1995-96 in which possession of khasra no. 28//13/1 was delivered to the father of accused Ram Lal.

18. Ld. Counsel for the accused tendered into evidence, certified copy of writ petition before the Hon'ble High Court as Ex. D2, grounds of writ petition Ex. D3, jamabandi for the year 1995/96 Ex. D3, Affidavit Ex. E4, letter dated 25.03.2015 Ex. D5, order dated 29.09 2016 Ex. D6, Application to Tehsildar Ex. D7, Application to Tehsildar dated 08.12.2017 Ex. D8, application to SDM dated 19.07.2017 Ex. D9, Application to SDM dated 26.3.2018 Ex. D10, application in Punjabi Ex. D11, application to Tehsildar in Punjabi Ex. D12, Application to SDM Punjab Ex. D13, Application to DC in Punjabi Ex. D14, application under Section 152 before Hon'ble High Court Ex. D15, Affidavit with application Ex. D16, Grounds in application under Section 151 Ex. D17, Affidavit with application Ex. D18, order dated 17.07.2008 passed by AC Ist Grade Ex. D19, Order dated 04.07.2011 ED. D20, Order of AC Ist Grade Ex. D21, Order of SDM Ex. D22, Mutation dated 02.02.2016 Ex. D23, mutation order dated 22.12.2015 EX24 and copy of roznamcha waqiyati dated 14.2.2009 for the year 2008-09 Ex. D25.

19. Thereafter, accused closed their defence evidence.

20. The Ld. APP for the State has argued that accused have committed the offence of criminal trespass while entering into the land owned and possessed by Harbhajan Singh, and, thereafter, both accused dishonestly took away cemented pillars and barbed wires installed around the land of Harbhajan Singh for safety purpose, without his consent. He further argued that prosecution has

brought enough cogent and convincing evidence in order to secure the conviction of the accused. He further argued that accused has failed to shatter the prosecution evidence. In the end, he prayed that accused may be convicted.

21. On the other hand, Ld. defence Counsel has vehemently controverted the contentions of Ld. APP for the State. He argued that accused of present case has been falsely implicated in the present case by ASP Nanak Singh, as he got annoyed with the accused persons, without any reason, while conducting enquiry on an application moved by accused Ram Lal himself. He further argued that it has come in the evidence of prosecution witnesses that accused Ram Lal was in possession of the land in dispute bearing Khasra No. 28//13/1 (2-18) since the time of his forefathers and this fact is admitted by Harbhajan Singh himself during the course of his cross-examination. Learned counsel for the accused has also brought my attention towards the enquiry report Ex PW8/A as per which the disputed khasra no. is 28//12/1 (2-18), whereas the case of prosecution is pertaining to Khasra No. 28//13/1 (2-18) and in this way, he has argued that the case of prosecution has no legs to stand. He further argued that there is material discrepancies in the evidence of prosecution witnesses, the benefit of which has to be given to the accused. Further, he placed reliance on case law cited in **Maheshwar Tigga Vs. The State of Jharkhand, 2020 (3) Apex Court Judgments 647 (S.C.); Suresh Kumar Vs. Chanchal Singh and another, RRR 1995 (3) 369; Swaran Singh Vs. Sr. Superintendent of Police, Hoshiarpur, RCR 1999 (3) 707; Gurmeet Singh Vs. Rachhpal Singh, 2004 (2) Criminal Court Cases 728 (P&H); Baldev Singh Vs. Harbhajan Singh, 2015 (3) Civil**

Court Cases 416 (P&H). In the end, he has made prayer for the acquittal of the accused.

22. After hearing the arguments of Ld. APP for the State, Ld. Counsel for accused, appraising the matter on record and the relevant law I am of the considered opinion that in the present case, following point for determination arises:-

- 1. Whether on 25.6.2015 in the day time, in the area of village Bhavnal, accused Ram Lal and Ramnik Singh committed criminal trespass while entering into the land of Harbhajan Singh measuring 1 Kanal 5 marlas out of khasra no. 28//13/1 (2-18) of Harbhajan Singh which was in possession of Harbhajan Singh and further has the prosecution been able to prove the case against the accused beyond shadow of reasonable doubt?*
- 2. Whether on the same date, time and place, both accused have dishonestly taken away i.e. cemented pillars and barbed wires which was installed around the land of Harbhajan Singh for safety purpose, without his consent and further has the prosecution been able to prove the case against the accused beyond shadow of reasonable doubt?*

POINTS FOR DETERMINATION No. 1 & 2:

23. After hearing the ld. APP for the State assisted by Sh. Raghubir Kumar, Advocate, Ld. defence counsel and after going through the case file, the record transpires that accused have been charged for facing trial for offence

punishable under sections 447, 379, r/w 34 of IPC. The offence of criminal trespass has been fully defined in Section 441 of IPC which provides as under:-

“Criminal trespass:- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully enter into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.”

24. In the present case, it is the specific allegation of prosecution that on 25.6.2015, both accused committed criminal trespass while entering into the land owned and possessed by Harbhajan Singh measuring 1 Kanal and 5 marlas bearing Khasra No. 28//13/1 (2-18) and dismantled the cemented pillars and barbed wire installed and dishonestly took away cemented pillars and barbed wires around the land of Harbhajan Singh, installed for safety purpose. So considering this version of prosecution, I am of the view that prosecution was required to prove possession of Harbhajan Singh on land bearing khasra no. 28//13/1 (2-8). In order to prove the guilt of the accused beyond the shadow of reasonable doubt and in order to prove possession of Harbhajan Singh on land bearing khasra no. 28//13/1 (2-8), said Harbhajan Singh himself stepped into witness box as PW-1. However, Harbhajan Singh during the course of his cross-examination in the Court as PW-1 has categorically admitted that land bearing Khasra No. 28//13/1 (2-8) is in possession of his vendor Mahinder Singh and

accused Ram Lal, in which, the accused had sown Bajra crop. He further admitted during in his cross-examination that he has not filed any eviction suit against the accused Ram Lal. He further admitted that he has admitted in his examination in chief that accused Ram Lal is in possession of land in dispute, being Pattedar/Thekedar and accused Ram Lal is sowing crops therein and even installed Tubewell for irrigation purpose. He even admitted in his cross-examination that though in revenue record, the exclusive possession of his vendor namely Mahinder Singh is depicted but on ground it is not so. PW-3 Joginder Singh who is one of co-sharer in the land in dispute has also admitted in his cross-examination that he did not file any eviction suit against the accused. Further, the perusal of file reveals that prosecution has relied upon the demarcation report Ex. PW7/A to form its case to the effect that in demarcation conducted on 11.6.2015 Ex. PW7/A, it was found that Harbhajan Singh purchased land measuring 1 Kanal and 5 marlas and after determining the length and breadth of the land of Harbhajan Singh, cemented pillars and barbed wires were installed for safety purpose, which the accused, on 25.6.2015, dismantled and stole away due to which the present case proceedings have been put in motion against the accused persons. However, Uttam Singh, Retired Kanoongo, Halqa Hajipur who conducted the demarcation Ex.PW7/A, during the course of his cross-examination has categorically admitted that he has not followed the procedure laid down by the Hon'ble Punjab and Haryana High Court in High Court Rules and Orders whereby it is necessary to serve notice to the landlord adjacent to the property to be demarcated but in judicial file, there is no such

notice served upon the accused persons, prior to conducting demarcation of the land in dispute. He has categorically admitted that on the private application of a party they do not deem it fit to conduct demarcation and they only conduct demarcation on the orders of Court. This cross-examination of PW-7 also goes to the root of the matter that even the demarcation report Ex.PW7/A is vitiated with the procedural defect for flouting away the procedures laid down by the Hon'ble Punjab and Haryana High Court in High Court Rules and Orders. This apart, the accused has placed on record the jamabandi for the year 1995-96 as Ex. D23, wherein, vide mutation No. 2034, the partition in favour of Rajinder Singh son of Babu Ram son of Munshi Ram who is father of accused Ram Lal has been sanctioned. Similar, picture is also depicted in jamabandi for the year 2000-01 Ex. D25. No doubt, in the latest jamabandi Ex. P1 the ownership of Harbhajan Singh, being joint owner, has been depicted. But, at the same time, in view of the revenue record Ex. D23 and Ex. D25, possibility cannot be ruled out that accused Ram Lal, being legal heirs of his father Rajinder Singh, is still in possession of the land in dispute bearing Khasra No. 28//13/1 (2-8). Mere transfer of portion of land by a co-sharer and subsequent effecting of demarcation and that too on an application moved privately by an applicant/vendor without notice and the without the consent the person who is in possession of the property clearly shrouds doubt in the story of prosecution. Moreover, the enquiry report Ex.PW8/A clearly shows that it has been mentioned in the findings given by the enquiry officer that, *".....It is further reported that after going through the statements of opposite parties namely Harbhajan Singh and others and record*

produced by them in enquiry, it was found that on 08.1.2015, Harbhajan Singh purchased land measuring 1 Kanal 5 marla bearing Khata No. 45/93, Khasra No. 28/12/1 (2-18) from Mohinder Singh, son of Rattan Singh, r/o village Bhavnal. At that time, the said land was in possession of applicant Ram Lal, who sown Bajra crop in the above-said land. After registry, Harbhajan Singh asked applicant Ram Lal to hand over the possession of above-said land to him”

The prosecution was required to prove its case in a chain like manner. Hence, in view of the discussion made above, it is held that prosecution has miserably failed to prove the guilt of the accused under Section 447 of IPC beyond the shadow of reasonable doubts.

25. Further, the accused have been charged under Section 379 r/w Section 34 of IPC on the allegations that both accused dishonestly took away the cemented pillars and barbed wires which was installed around the land of Harbhajan Singh for safety purpose. However, the entire evidence of prosecution reveals that it failed to prove the guilt of the accused beyond the shadow of reasonable doubt, on this count also. The perusal of evidence of PW-1 Harbhajan Singh who is alleged owner of the above-said barbed wires and pillars reveals that during the course of his cross-examination, he has categorically admitted that he has not produced any document regarding ownership or possession of the pillars and barbed wires. Furthermore, PW-6 Investigating Officer SI Jagat Singh, though, in his examination in chief deposed about cemented pillars as Ex. MO1 to Ex. MO-5, but, during the course of his cross-examination, he has categorically admitted that it is correct that case property i.e. pillars which had

brought in the Court, bear no case number, FIR or the Police Station. Further, he even admitted that he has not brought the complete case property, as he did not bring the barbed wires, during the course of his evidence. Thus, non production of entire case property debars the accused from their right to cross-examine the prosecution witnesses on the aspect of complete case. Further, except, these evidence of prosecution, there is no other evidence led by the prosecution in order to secure the conviction of accused under Section 379 r/w Section 34 of IPC, which itself does not inspire confidence of this Court and cannot be made basis for convicting the accused in present case.

26. Furthermore, PW-6 Investigating Officer SI Jagat Singh during the course of his cross-examination has admitted to the effect that enquiry into the present case has been conducted by Sh. Nanak Singh, IPS and he was not with him, when, the above-said Officer conducted enquiry into the matter. He further admitted that he only arrested the accused in the present case and rest of the investigation was conducted by Sh. Nanak Singh, IPS. However, the perusal of the file reveals that prosecution has not cited the name of Sh. Nanak Singh, IPS in the list of witness and also did not made any efforts to join Sh. Nanak Singh, IPS into the proceedings of the present case whose evidence is one of the most significant piece of evidence of present case. Thus, non joining of Sh. Nanak Singh, IPS, with the proceedings of present case also creates dent into the prosecution story. In my considered opinion, the recovery of alleged stolen articles appears to be planted one in order to benefit the case of prosecution. As such, no offence under Sec. 379 r/w Sec. 34 IPC is made out against accused.

27. In the light of discussion made in the forgoing paras, the Court is constrained to preclude that prosecution has miserably failed to prove the guilt of the accused, therefore, the points of determination are decided in favour of accused and against the prosecution. Consequently, the accused are ordered to be acquitted from the charge framed against them. Personal bail bond of the accused and his surety bond are ordered to be discharged. However, fresh personal bond and surety bond which have been furnished by accused are accepted and attested in compliance of Section 437-A of Cr.P.C. in order to ensure the presence of accused in the Appellate or Revisionist Court as the case may be, in case any appeal or revision is preferred by the State.

Case property be dealt with, as per rules, subject to the result of appeal or revision, if any. File be consigned to the record room, Dasuya, after due indexation.

Pronounced in open Court.
Dated:21.2.2022
*Saurabh, Steno**

(Amardeep Singh Bains) PCS,
Sub Divisional Judicial Magistrate,
Mukerian (UID No.PB0335)

Dictated on :21.2.2022
Transcribed on :21.2.2022
Checked on :21.2.2022
Signed on :21.2.2022

(Amardeep Singh Bains), PCS,
Sub Divisional Judicial Magistrate,
Mukerian (UID No.PB0335)