

**IN THE COURT OF SH. SATISH KUMAR,
JUDICIAL MAGISTRATE 1ST CLASS,
AMRITSAR.**

CNR No.PBAS03-012752-2018
CHI/1348/18
Date of decision:25.03.2019

- State **versus**
1. Surinder Singh son of Harbhajan Singh,
resident of Jaspal Nagar, Mehta Road, Vallah,
Amritsar.
 2. Rekha Devi Paswan wife of Mahinder
Paswan, resident of Teg Bahadur colony,
Mehta Road, Vallah, Amritsar.

-----Accused

**FIR No.317 of 25.10.2017
U/s 188 IPC.
P.S.'A'Division, Amritsar.**

Present: Sh. Jagdeep Kumar, Addl. Public Prosecutor for the State.
Accused on bail with counsel.

JUDGMENT.

1. Accused, aforesaid, have been sent for trial, by the Officer In-charge of Police station A-Division, Amritsar, to face trial under Section 188 IPC, on the allegations that on 25.10.2017 in the area of police post Vallah, Amritsar, accused were found in raising illegal

construction of their houses in the restricted area and violated the order of Commissioner of Police, Amritsar, 06.10.2017 and thereby committed an offence punishable under Section 188 IPC. Case was registered against the accused. Statements of witnesses were recorded and after completion of the other necessary formalities, the challan against the accused was presented in the court.

2. On presentation of challan and appearance of accused in the court, copies of challan and other documents relied upon by prosecution was supplied to accused, free of cost, as envisaged under Section 207 Cr.P.C.

3. Finding a prima facie case, accused were charge sheeted under Section 188 of Indian Penal Code, to which they pleaded not guilty and claimed trial. The evidence of prosecution was ordered to be called.

4. In order to prove its case, prosecution examined PW1 ASI Baldev Singh, who while appearing in the court, has proved memos of arrest of accused as Ex.P1 and Ex.P2 and memos of personal search as Ex.P3 and Ex.P4. PW2 HC Didar Singh, while appearing in the court endorsed the documents as proved by PW1. PW3 LC Gurmit Kaur also

deposed about the arrest memos and personal search memos of accused.

5. No other PW was examined by the prosecution. The prosecution remained failed to conclude its evidence despite availing numerous opportunities. There was no ground to give any further opportunity to the prosecution to lead any further evidence. The evidence of the prosecution was closed by order.

6. Statements of the accused under Section 313 Cr.P.C. were recorded, in which all the incriminating evidence against the accused was put to them, to which they denied and pleaded false implication. However, despite being given opportunity, accused did not intend to lead any defence evidence.

7. I have heard the arguments of Ld. Addl. PP for the state and Ld. Defence Counsel and have also gone through the file very carefully and following point emerged for determination:-

1. "Whether on alleged date, time and place, accused have disobeyed the order of Commissioner of Police, Amritsar, City by raising illegal construction of their

houses in restricted area falling within 1000 square yards of Army Damp, Vallah?

8. Learned Additional Public Prosecutor for the State has argued that from the testimony of prosecution witness, the guilt of accused, for an offence punishable under Section 188 of Indian Penal Code, stands fully proved and as such, the accused may kindly be convicted for having committed offence aforesaid and punished according to law.

9. On the other hand, learned defence counsel has argued that no such case for an offence punishable under Section 188 IPC with which the accused has been charged, can be said to have been proved against them, beyond any shadow of reasonable doubt and as such, the accused are entitled to be acquitted of the charges framed against them, giving them benefit of doubt.

10. I have considered the respective submissions made by learned Additional Public Prosecutor for the State and learned defence counsel and have also carefully gone through the record..

11. As per the case of prosecution, on 25.10.2017, police party headed by HC Satwant Singh, was present in the area at chowk

Vallah, in connection with patrolling and in search of bad elements, where Naib Subedar Ajay Singh, Land JCO, Army Dump, Vallah, Amritsar produced a written application before HC that Surinder Singh and Rekha Devi are raising illegal construction in the area falling within 1000 square yards of Army Dump Vallah, inspite of knowledge of the directions issued by Commissioner of Police, Amritsar and they were directed not to raise construction, but of no use and as such he disobeyed the order dated 76511-75/Security dated 6.10.2017 passed by Commissioner of Police, Amritsar city.

9. In order to prove its case, prosecution examined PW1 ASI Baldev Singh, who while appearing in the court has supported the prosecution version and proved on record memos of arrest of accused as Ex.P1 and Ex.P2 and memos of personal search as Ex.P3 and Ex.P4. PW2 HC Didar Singh and PW3 LC Gurmit Kaur have also supported the version of prosecution and proved on record memos of arrest and memos of personal search of accused. All the witnesses have identified the accused in the court. The witnesses have fully proved the case of prosecution. The cross-examination of said witnesses was not

conducted and accordingly same was treated to be Nil. The witnesses examined by the prosecution have duly proved case against the accused in their statements. Even otherwise, no enmity of the police official, who deposed against the accused has been proved by the accused. So, the testimonies of official witnesses cannot be discarded on the ground that there is no corroboration of testimony of official witnesses by any independent witness, as the court has to see the quality of evidence, but not the quantity. Accused have been found to be raising illegal construction over their houses and they violated the orders of Commissioner of Police, Amritsar stands a corroborative circumstance.

10. So, for the reasons as above, this court holds the accused guilty for the offence under Section 188 IPC and they stand convicted for offence under Section 188 IPC. Let they be taken into custody and be heard on the quantum of sentence.

Pronounced in open court

25.03.2019

(Satish Kumar)

Judicial Magistrate, Ist Class

Amritsar. (UID No.PB0375)

QUANTUM OF SENTENCE

Present : Shri Jagdeep Kumar, Additional Public Prosecutor for
State.
Convicts in custody.

11. I have heard the convicts on the quantum of sentence. The convicts have stated that they are poor persons and are the only bread winners of their families. They prayed that a lenient view be taken and they will not commit the offence again. Keeping in view the submissions made by the convicts and the nature of the offence committed, the convicts are fined of Rs.500/-each for offence under Section 188 IPC and in default of payment of fine, they shall undergo RI for 7 days. Fine amount stands deposited. Case property, if any, be disposed off after the expiry of period of appeal or revision, if any. Their surety stands discharged. File be consigned to the record room.

Pronounced in open court

25.03.2019

*Hira Lal
Stenographer Gr.II

(Satish Kumar)

Judicial Magistrate, Ist Class

Amritsar.
(UID No.PB0375)

State vs.Surinder Singh etc

Present:- Shri Jagdeep Kumar, Addl. PP for State.
Accused on bail with counsel.

No prosecution witness is present, despite last opportunity. Perusal of file shows that charge against the accused was framed on 14.1.2019 and since then, prosecution availed sufficient opportunities, but have failed to conclude its evidence. I find no justification to adjourn the case further for evidence of prosecution. As such, the evidence of prosecution is closed by order.

Statements of accused under section 313 Cr.P.C recorded. Accused opted not to lead evidence in defence. Arguments have been heard. Vide my separate detailed Judgment of even date, accused have been convicted and sentenced as detailed in Judgment. The file be consigned to the Record Room.

Pronounced in open court

25.03.2019

*Hira Lal
Stenographer Gr.II

(Satish Kumar)

Judicial Magistrate, Ist Class

Amritsar.
(UID No.PB0375)

