

**In the Court of Babita, PCS, (UID-PB0474)
Judicial Magistrate First Class, Hoshiarpur**

CHI No. 123/2017

Date of Institution: 27.3.2017

CIS No.123/2017

Decided on: 17.1.2019

CNR No.PBHO030007912017

State

versus

1. **Iqbal Singh** son of Kabal Singh, Caste Jat, resident of village Harkhowal, PS Mehtiana, District Hoshiarpur.
 2. **Paramjit Singh** son of Iqbal Singh, Caste Jat, resident of village Harkhowal, PS Mehtiana, District Hoshiarpur.....(**Accused**)
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**FIR No. 112 dated 26.7.2016
Under sections: 188, 427 IPC
Police Station: Mehtiana.**

Present: Sh. Manoj Kumar, APP for the State.
Accused Iqbal Singh and Paramjit Singh on bail with
counsel Shri SK Jhamat, Advocate.

JUDGMENT:

Accused Iqbal Singh and Paramjit Singh have been forwarded to face trial by SHO, police station Mehtiana, for alleged commission of offences punishable under section 188, 427 IPC (*hereinafter referred to as 'Act'*).

2. Prosecution version as unfolds from final report under section 173 Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) is that on 26.7.2016, ASI Satnam Singh alongwith other police officials was on patrolling at village Attowal where complainant Jarnail Singh came present and got recorded his statement to the effect that he is agriculturist and his land falls towards the Eastern side of village Harkhowal. He further stated that land of Iqbal Singh and Paramjit Singh adjoins his land. He next mentioned about an application filed before SDM, Hoshiarpur alleging that on 19.5.2016 Iqbal Singh and his son Paramjit Singh had burnt the narrh of wheat crop at about 4/5 PM. As

alleged the flames of fire were so high that his maize crop which was in growing stage was damaged towards Eastern side. He next alleged that the village panchayat had told Iqbal Singh and Paramjit Singh to make good the loss, but they did not adhere and they also violated the orders of Deputy Commissioner Hoshiarpur by putting fire to narrh of wheat crop.

3. On the above said statement FIR was registered against the accused. Accused were arrested. Investigation was conducted and after completion of investigation challan was presented against the accused u/s 188, 427 IPC. Compliance of provisions of section 207 Cr.P.C. was made. Finding a *prima facie* case, charges against accused persons under sections 188, 427 IPC were framed *vide* order dated 9.10.2017, to which accused pleaded not guilty and claimed trial.

4. In order to bring home the guilt of accused under above said sections, prosecution examined Jarnail Singh complainant as PW-1 who deposed as per prosecution version and proved on record his statement Ex.PA, fard jamabandi Ex.PB, and photographs Ex.PC to Ex.PE. PW-2 Raminder Kaur also supported the prosecution version. PW-3 Amarjit Singh also supported the prosecution version and proved on record photographs Ex.PC to Ex.PE. PW-4 HC Sarabjit Singh proved on record statement of complainant Ex.PA, ruqa Ex.PW4/A, FIR Ex.PW4/B, endorsement on ruqa Ex.PW4/C and photographs Ex.PC to Ex.PE. PW-5 Sanjiv Kumar Clerk, MA Branch DC Office, Hoshiarpur proved on record order No.5128/5176 dated 5.4.2016 passed by Ms. Andita Mitrea, Deputy Commissioner, Hoshiarpur as Ex.PW5/A and complaint under

Sec.195 Cr.P.C. Ex.PW5/B. Investigating Officer, ASI Satnam Singh has been examined as PW-6 who proved on record documents as proved by PW-4 and further proved on record site plan Ex.PW6/A, arrest cum intimation memos Ex.PW6/B and Ex.PW6/C, personal search memos Ex.PW6/B1 and Ex.PW6/C1, complaint under Sec.195 Cr.P.C. Ex.PW5/B and copy of order under Sec.144 Cr.P.C. Ex.PW5/A. However, prosecution failed to adduce its entire evidence despite availing numerous sufficient opportunities and accordingly prosecution evidence was closed vide order dated 11.1.2019.

5. On conclusion of prosecution evidence, statements of accused were recorded under section 313 Cr.P.C., wherein all the incriminating circumstances were put to them to which they pleaded false implication. They opted to lead evidence in their defence, but they did not examine any witness in their defence and closed defence evidence.

6. On the strength of evidence stated above learned APP has submitted that it is duly proved on record that accused had set fire to their fields in utter disregard of orders of deputy commissioner, which also led to damage of maize crop of the complainant. Accordingly, he has submitted that charges against the accused under section 188 IPC who had been identified in court have been duly proved and he may be convicted for commission of offence u/s 188 IPC.

7. On the other hand learned defence counsel has contended that there are material contradictions in the testimony of prosecution witnesses. It is next submitted that the extent of alleged damage to the

fields of complainant has not been specified. It has been submitted that no independent witness has been examined. It is further submitted that the only witnesses examined by prosecution are interested witnesses being responsible for prosecution of accused and accused cannot be held liable on basis of testimony of such interested witness. Accordingly, acquittal of the accused has been prayed for.

I have heard and thoughtfully considered the submissions raised by learned APP and defence counsel and carefully perused the judicial file, where from, following point arise for determination;

I. Whether the accused persons burnt their stubble?

II. Whether the offences with which accused has been charged is made out or not?

Point No. I.

8. The prosecution version is that accused had put stubble of his crop on fire in violation of orders of deputy commissioner, which also caused damaged to the maize crop of complainant. To prove the prosecution version firstly complainant deposed as such being PW1. Besides complainant prosecution examined PW2 Raminder Kaur who is an independent witness and had witnessed the occurrence stated that on 19.05.2016 she was collecting straw from her fields and at that time accused persons came present and burnt stubble in their fields which damaged the maize crop of the complainant. PW3 Amarjit Singh son of the complainant also made similar deposition. All these witnesses have been cross examined at length by learned defence counsel however

nothing material could be elicited from their cross examination to cast a doubt as to prosecution version.

9. Much stress has been laid by learned defence counsel on the fact that jamabandi Ex. PB is not admissible in evidence. It is correct that jamabandi Ex. PB regarding the property of the complainant is only a photocopy however otherwise also the evidence of PW1 to PW3 that fields of complainant adjoin the fields of accused has remained unrebutted. It has not even been suggested to the complainant that he does not own any land or that his land does not adjoin to the fields of accused. Therefore, the revenue record was not even necessary to have been proved in these circumstances. Moreover this court cannot lose sight of the fact that PW2 Raminder Kaur is an independent witness. No reason whatsoever has been cited to discredit her testimony. Hence from the testimony of these witnesses not only has prosecution proved beyond all reasonable doubts that accused had bunt their stubble but is is also proved to hilt that due to said act of the accused damage was caused to the property of complainant i.e. maize crop. Point No. I stands answered thus.

Point No. II

10. Charges against the accused have been framed under sections 427 and 188 IPC. Section 427 IPC provides punishment for mischief to the property of Rs. 50/- or upwards. In view of discussion held under point No. I ingredients of offences punishable under section 427 IPC are fulfilled and therefore commission of offence punishable

under section 427 IPC is proved beyond all reasonable doubts. Coming on to offence under section 188 IPC, same provides punishment for violation of order promulgated by administration. In the instant case investigating officer ASI Satnam Singh stepped into witness box as PW6 and stated that on 26.07.2016 he alongwith other police officials was present at adda Attowal where complainant came present and recorded his statement. He proved on record copy of order of District Magistrate Ex. PW5/A and complaint under section 195 Ex. PW5/B. The order Ex. PW5/A of the District Magistrate dated 05.04.2016 is clear, unambiguous and promulgated in exercise of powers under section 144 Cr.P.C. that burning of stubble was banned in the district to control pollution and to avoid accidents of fire etc. The testimony of PW1 to PW3 proves on record the violation of said order by the accused.

11. The testimony of prosecution witnesses is credible and reliable and proves beyond shadow of all doubts that accused had burnt the stubble in violation of order of deputy commissioner, which order has been proved on record. The ingredients of offence punishable under section 188 IPC also stand fulfilled. Hence, accused are convicted for commission of offences punishable under section 188 and 427 IPC.

The convicts be taken in custody and be produced at 2:30 PM for hearing on quantum of sentence

**Pronounced in open Court on this;
17th day of January 2019**

**(Babita), PCS
Judicial Magistrate Ist Class,
Hoshiarpur (UID-PB0474)**

Order of Sentence

Present: Sh. Manoj Kumar, APP for the State.
Convicts Iqbal Singh and Paramjit Singh in custody with
counsel Shri SK Jhamat, Advocate.
Iqbal Singh and Paramjit Singh have been convicted for
commission of offences punishable under section 188 and 427 IPC.
However learned counsel for the convicts prays that convicts are first
offender and members of the same family. It is submitted that accused
had no criminal intent. Accordingly, a prayer has been to release him on
probation. On the other hand, learned APP has submitted that offence
committed by accused involves serious social implications. He has
submitted that maximum punishment may be awarded to convicts.

While passing an order for sentence, Court has also to
consider the circumstances of the convict and a balanced approach has to
be taken, which justifies the sentence imposed in view of act done and
consequences that ensued. Accordingly, in the facts and circumstances of
this case, this court deems it appropriate to sentence the convicts as
under;

S. No.	Head Charge	of Offence	Sentence	In Default
1.	First	188	Fine of Rupees Two Hundred only (Rs. 200/-) each	Simple Imprisonment for 15 days
2.	Second	427	Fine of Rupees One Thousand Five Hundred only (Rs. 1500/-) each	Simple Imprisonment for 30 days

Ordered accordingly. Fine paid against proper receipt.

Convict be released forthwith. Earlier bail bonds and surety bonds of
convicts stand discharged. Case property if any be disposed of after

expiry of period of appeal. The case file be consigned to the Record Room, Hoshiarpur.

**Pronounced in open Court on this;
17th day of January 2019.**

**(Babita), PCS
Judicial Magistrate Ist Class,
Hoshiarpur (UID-PB0474)**

Jaswinder Singh JW