

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 514 of 2009

Reserved on : November 6, 2019

Date of Decision : January 3, 2020

Kanshi Ram Panchhi ...Appellant/complainant.

Versus

Amar ChandRespondent/accused.

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

*Whether approved for reporting?*¹ Yes.

For the appellant : Ms. Anaida Kuthiala, Advocate, for the appellant.

For the respondent : Mr. V.B.Verma, Advocate, for the respondent.

Anoop Chitkara, Judge.

Seeking conviction of accused Amar Chand (respondent herein), the complainant Kanshi Ram Panchhi (appellant herein), has come up before this Court by filing the present Criminal Appeal challenging the acquittal of the accused for the commission of offences of criminal defamation, insult, threat and causing simple injuries.

2. The gist of the case necessary to arrive at a just conclusion, traces its history to a criminal complaint filed by one of the brother-

¹Whether reporters of Local Papers may be allowed to see the judgment?

in-law (*Saadu*), against the other. The complainant alleged in his complaint that his house and that of the accused are adjacent. In between their houses, there is a government land. Families of both the parties use this land as a compound as well as common path. The complainant further alleged that the accused keeps on trying to encroach upon this government land and the complainant prevents him from doing so. Lastly, the accused was successful to encroach upon the Government land and the complainant filed an application before the Tehsildar Sadar, Mandi, HP. Pursuant to this application, Kanungo and Patwari visited the spot on April 11, 2002. On the said date the demarcation could not take place.

3. On April 16, 2002, the demarcation had been scheduled. The complainant was waiting for the revenue officials to associate in the demarcation process. The accused started raising pillars on the government land adjacent to the wall of the house of the complainant. The complainant prevented the accused from raising the pillar and blocking the path. However, instead of stopping the construction work, the accused got furious and hurled abuses on him. The accused provoked the complainant with the intention that such provocation will make the complainant loose his temper and he would react with breach the peace.

4. After this, the accused caught hold of the complainant from his neck and pushed him. The complainant fell down the stairs and suffered body pain. The complainant further alleged that the accused proclaimed that complainant's mother had brought her daughter-in-law (his wife), in dowry. The complainant asked the accused not to defame him by using defamatory words. However, the accused proclaimed that he will repeat these words. The complainant alleged in the complaint, that due to these acts of defamation, his image has lowered and reduced in the society.

5. The Judicial Magistrate, 1st Class, Court No. II, Mandi, recorded the preliminary evidence, and proceeded further to take cognizance of the offences and summoned the accused. After that, the Court framed charges against the accused Amar Chand for commission of offences punishable under Sections 323, 500, 504 and 506(1) of IPC. The accused did not plead guilty and claimed trial.

6. The complainant appeared as CW-1 and examined three more witnesses in support of his case. After recording of the complainant's evidence, the Court put incriminating circumstances to the accused in compliance with Section 313 CrPC. The accused denied the case and examined two witnesses in this defence. The

accused also tendered in evidence the report of Revenue Department, *Rapt Roznamcha Wakyati* (Ext. DW-2/A).

7. Vide judgment dated March 21, 2009, passed in Private Complaint No. 118 -I/2002, titled *Kanshi Ram versus Amar Chand*, the Judicial Magistrate, 1st Class, Court No. 2, Mandi, H.P., dismissed the complaint. Challenging this dismissal, the appellant/complainant has come up before this Court, by filing the present appeal under Sections 374 read with Section 482 of the Code of Criminal Procedure, 1973.

8. I have heard Ms. Anaida Kuthiala, Advocate, for the appellant/complainant and Mr. V.B. Verma, Advocate for the respondent/accused. I have also waded through the entire record.

Discussions and reasoning

9. Ms. Anaida, learned Counsel for the complainant submits that the accused publicly made obnoxious, abusive remarks and imputations against him. She further submits that the accused made abusive remarks questioning the legitimacy of his wife. She further submits that right to reputation could not be crucified at the behest of the right of the accused person's right of free speech. She submits that right to free speech has to be exercised with some reasonable restrictions. Accused had full knowledge of the consequences of his acts of tarnishing the image and reputation of complainant and his

family. She submits that the complainant had all the rights to defend his easementary rights, over the path. Ms Anaida Kuthiala, Advocate submits that the accused caught hold of the complainant by his collar and pushed him down the steps. He did not stop there and intentionally insulted, harassed and hurled abuses at him, with full knowledge that society would take it bad against him. She further submitted that such bold and filthy abuses would have resulted in breach of peace. Ms. Anaida Kuthiala, Advocate, sought reversal of the impugned judgment and sought conviction of the accused for the charges he stands charged with.

10. The incident took place on April 16, 2002, whereas the instant complaint was filed on May 8, 2002. The delay in filing the complaint assumes importance in view of the fact that as is stated by the complainant in witness box, while appearing as CW-1, that the accused had started raising pillars on the government land, adjacent to the wall of his house. Kehar Singh stated in his cross-examination, that during the scuffle, the accused had demolished the filler. It means that somehow the quarrel had come to an end. That is why the complainant did not immediately file the complaint. Under section 313 CrPC, the accused stated that the allegations are false. He stated that number of complaints have also been filed by him against the complainant. Therefore, the possibility cannot be ruled

out that after settling the matter, the complainant again raked up the issue after a gap of around one month.

11. The complaint and the evidence brought on record proves that the case suffers from major contradictions. On the basis of his complaint both the Patwari and the Kanungo had visited the spot on April 11, 2002. Patwari, Jyoti Prakash appeared as CW-2 and testified that he had visited the spot on April 11, 2002. He stated that on that day demarcation could not take place and he again visited the spot on April 16, 2002. This statement is contradicted and belied by exhibit DW-2/A. The dispatch register did not mention about receipt of any application for demarcation report for visit of Patwari to the spot. The accused examined one Pardeep Kumar as DW-1 to prove this fact. Accused also examined Durga Dass as DW-2 to prove the document (Ext. DW-2/B). Thus, the presence of Patwari at the spot is contradicted by the official record.

12. There is another contradiction in the case set up by the complainant. In the complaint there is no mention of pillars.

13. A Co-ordinate Bench of this Court, during the pendency of this appeal, had made an endeavour for amicable settlement, which failed. Be that as it may, on analysis of the evidence on merits, I find that there are improvements, contradictions and omissions in the

evidence laid down/addressed by the complainant. Certainly the accused is to be given the benefit of doubt.

14. I have also gone through the judgment of the trial Court which is well reasoned and is based on complete, correct and proper appreciation of evidence (documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity in the same.

15. In view of the above discussions, I find that there is no merit in the appeal and hence the same is dismissed. The judgment of acquittal, rendered by the learned trial Court in Private Complaint No. 118-I of 2002, dated 21.3.2009, is affirmed.

Bail bonds furnished by the accused are discharged. All pending applications (if any) are closed. Records of the Court below be immediately sent back.

**(Anoop Chitkara),
Judge.**

January 3, 2020 (PK)