
(2008) 05 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision 1809 of 2007 (O and M)

Hardial Singh and others

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 34, 435, 436

Citation : (2008) 4 RCR(Criminal) 220

Hon'ble Judges : Vinod K.Sharma, J

Bench : Single Bench

Advocate : A.K. Walia, for the Appellant; K.S. Pannu, AAG Punjab for the Respondent No. 1 and Mr. Narinder Singh, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—Crl. Misc. No. 88238 of 2007:

This is an application u/s 5 of the Limitation Act for condoning the delay of 35 days in filing the revision petition.

It has been asserted in the application that as petitioner No. 1 was away to pilgrimage tour, the present revision petition could not be filed in time.

For the reasons stated in the application, delay of 35 days in filing the revision petition is condoned.

Crl. Misc. stands disposed of.

Criminal Revision No. 1809 of 2007:

2. This criminal revision is directed against the order dated 25.5.2007 passed by the learned Sessions Judge, Bathinda, whereby charge against the petitioner u/s 436 read with section 34 IPC has been framed.

The FIR registered against the against the petitioners reads as under:

"It is stated that I am residing at the above address. We are four brothers. All the brothers have joint land situated on the passage leading to Akalia. On the western side, some portion of our land adjoins the land of Hardial Zaildar, where we have made a bore for watering our fields, and a 1 H.P. cooper engine has been installed. One `Kotha" whose roof is of Bala and Sarkanda has been built for keeping domestic articles. Today I was going to water my fields at 1.00 P.M. When I was to turn towards the passage leading to my bore, I found Hardyal Singh son of Ujagar Singh, Balwinder Singh @ Bala and Sukhvir Singh sons of Hardial Singh, Jat, residents of Chauke standing there. Within my view, Sukhbir Singh brought a diesel Kan from the Kotha and poured diesel on the roof of the Kotha and Balwinder Singh said that they have taught a lesson and in future they will not pick up quarrel. Due to fear I ran away from the spot. In the Kotha, our three cots, two Kahi, one Dholi for sparay, two Cans containing 20 liters diesel each and 2 Kgs maize seed was burnt. The motive for the offence is that Balwinder @ Bala had given beatings to my son Raja Singh a few days earlier for which I had lodged a protest. Due to this reason they have set my on fire. I have to report the matter. Action may be taken."

3. Learned counsel for the petitioners by placing reliance on the judgment of this Court in the case of Smt. Jashmero v. The State of Haryana, 1979 PLR 420 contends, that no offence u/s 436 IPC can be said to have been made out against the petitioner on the evidence and the allegations leveled in the FIR. This Court in the said judgment has been pleased to lay down as under:

"7. The only other question that falls for consideration is as to the nature of the offence committed by the appellant. The conviction of the appellant can be upheld u/s 436 of the Indian Penal Code if the prosecution has succeeded in proving that the Chhan which was burnt during the fire, was in the nature of a building, which was being used for the custody of the property as the two bullocks belonging to Nirmal Kumar PW were tethered in the Chhan and the said bullocks were got burnt by fire but there is no evidence led on the record to show that the Chhan in question was a building. In ordinary parlance, in village a Chhan is a Kutcha structure which is roofed by straws or other such like material and the prosecution has failed to lead any evidence to show that the Chhan was in the form of a construction which could be termed as a building within the meaning of Section 436 of the Indian Penal Code. In Babulal and another v. State, it was held that structure made of straw and not of bricks and mortar may be considered a building if it has got the necessary furnishings need for a buildings, such as doors, bars etc. An ordinary double thatched shed resting on bamboos or wooden or brick pillars having no doors etc., cannot be treated as building within the meaning of the term used in Section 436 of the Indian Penal Code. Since the prosecution has failed to prove the nature of the Chhan, the benefit of doubt has to go to the appellant. In this view of the matter, it is difficult to hold that the appellant was guilty for an offence u/s 436 of the Indian

Penal Code. However, the appellant will certainly be guilty for an offence u/s 435 of the Indian Penal Code as she has been found to have committed the mischief by fire which resulted into damage of the property of the PWs as defined u/s 435 of the Indian Penal Code. Consequently, the conviction and sentence of the appellant u/s 436 of the Indian Penal Code is set aside and she is convicted u/s 435 of the Indian Penal Code."

4. Learned counsel for the petitioners has also placed reliance on the judgment of this Court in the case of *Raj Singh v. State of Haryana*, 2003 (2) RCR (Cri) 697 to contend that Chappar does not come within the definition of building and charge u/s 436, IPC is not made out if any damage is done to chappar.

5. The reading of the FIR and the evidence led by the prosecution does not prima facie prove that the "kotha" which is said to have been set on fire was a building to attract offence u/s 436, IPC and, therefore, no charge under the said section could be framed.

6. Consequently, the revision petition is allowed, the charge framed u/s 436 IPC is set aside and the case is remitted back to the Additional Sessions Judge, Bathinda, for reframing of charge for the offence which is made out on the evidence available on record.