10. It was then urged that while disposing of the main petition under section 9 of the Act the trial Court had awarded costs of Rs. 250 to the wife against the husband and in this manner the husband will have to pay total expenses of Rs. 2,250 to the wife. Since the Court below has found that the wife is entitled to total expenses of Rs. 2,000 it is made clear that the litigation expenses of Rs. 2,000 awarded by the Court below by the impugned order would include the costs of Rs. 250 imposed against the husband in the main petition under section 9 of the Act.

11. For the reasons recorded above, this revision fails and is dismissed in *limini* with no order as to costs.

S. C. K.

Before M. M. Punchhi, J.

NAUSHERA and others,—*Appellants.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Appeal No. 737 *of* 1979.

March 10, 1981.

Indian Penal Code (XLV of 1860)—Sections 399 and 402—Distinction—Accused tried under sections 399 and 402—Acquittal under section 399—Charge under section 402—Whether would fail automatically.

Held, that though the offence falling in both the sections 399 and 402 of the Indian Penal Code, 1860 would probably involve similar ingredients, the only difference between the two would be that while under section 402 of the Code mere assembly without preparation is enough, section 399 of the Code would be attracted only when some additional step is taken by way of preparation. There can be cases where there may be an assembly for the purpose of decoity without even a fringe of preparation. Thus, there is a distinction between the two sections which is easily discernible and the mere fact that the accused were acquitted of the charge under section 399 of the Code would be no ground to knock off the charge under section 402 of the Code against them. (Para 4).

Appeal from the order of the court of Shri K. D. Mohan, Sessions Judge, Bhiwani, dated the 14th May, 1979/28th May, 1979 convicting and sentencing the appellants.

H. C. Sethi, Advocate, *for the appellant.*

Nirmal Yadav, A.A.G., Haryana, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J. (oral)

(1) This is an appeal by six persons against their conviction under Section 402, Indian Penal Code, recorded by the Sessions Judge, Bhiwani, who awarded sentence of two years rigorous imprisonment to each of them. Out of them, two namely, Nanak and Naushehra belong to district Bhiwani whereas the remaining four are from the adjoining State of Rajasthan.

(2) Broadly stated, the case of the prosecution was that on March 21, 1978, the Station House Officer, Police Station City Bhiwani, Sub-Inspector Rajbir Singh (PW 9), received secret information that five or six dacoits of the Nanak Gang headed by Nanak were with fire-arms *et cetera* sitting in a deserted brick-kiln near Dharamsala Harnam Dass in the area of village Naurangabad, near the Bhiwani-Rohtak Road. The secret information further disclosed that those dacoits had a mind to commit dacoity in the house of Chaturbhuj Brahman of village Rewari Khera. Sub-Inspector Rajbir Singh (PW 9) taking with him adequate police force proceeded towards the direction indicated at about 9-15/9.30 p.m. Near the outskirts of the town Bhiwani, he saw Sohan Singh (PW 2), Sukhpal Singh (PW 3) and one Dalip Singh. Taking them along he went to the place indicated in the area of village Naurangabad. The party split into three groups in order to attack the hide out of the culprits. Having made a cordon, the Sub-Inspector addressed the dacoits in loud voice that they were in police cordon and they should drop their arms on the ground and surrender themselves to the police with their hands up. He had to repeat his direction a couple of times when one of the dacoits replied that the direction had been complied with. The cordon was narrowed and getting near the culprits who were visible in the moon-light, the six appellants were

found with their hands up and their weapons lying on the ground. One by one each appellant picked up his weapon at the askance of the Inspector and formally handed the same over to him. It is unnecessary to give out the details of the weapons except to mention that they were of illicit origin. The appellants were arrested, the investigation was completed, the case was sent up for trial and ultimately the appellants were convicted and sentenced as aforesaid.

(3) On appeal, the learned counsel for the appellants, has raised before me three contentions (i) that the acquittal of the appellants of the charge under Section 399 of the Indian Penal Code should be taken to be fatal to the charge under Section 402 of the Indian Penal Code. To this argument aid was also sought from the fact that the appellants stood acquitted for charges under Section 25 of the Arms Act also; (ii) that even if the facts alleged by the prosecution were treated to be correct, those facts were parallel to a decision rendered by their Lordships of the Supreme Court in *Chaturi Yadav & Ors.* v. *State of Bihar* (1) and (iii) that the evidence of the prosecution was discrepant on material particulars and not worthy of reliance.

(4) Sections 399 and 402, Indian Penal Code, may be noted side by side.—

399 I.P.C.	402 IPC
Whoever, makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.	Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Though the offence falling in both the sections would probably involve similar ingredients, the only difference between the two would be that while under Section 402, Indian Penal Code, mere assembly without preparation is enough, Section 399, Indian Penal Code, would be attracted only when some additional step is taken by way of preparation. There can be cases where there may be an assembly for the purpose of dacoity without even a fringe of

(1) 1980 CAR 237 (SC).

preparation. Thus, there is distinction between the two sections which is easily discernible. The mere fact that the appellants were acquitted of the charge under Section 399, Indian Penal Code, would be no ground to knock off the charge under Section 402, Indian Penal Code against them.

(5) Out of the members of the raiding party, Sohan Singh (PW 2) stated that the dacoits were hiding in a working brick-kiln but he could not recollect whether the bricks were being prepared in it or not. Sukhpal Singh (PW 3), who was declared hostile, stated that the appellants were sitting near the wall about a furlong from the Piayu. Assistant Sub-Inspector Kartar Singh (PW 8) stated that the appellants were arrested from their hide out in a deserted brick-kiln. Similar was the statement of Sub-Inspector Rajbir Singh (PW 9). All the PWs were unanimous that the brick-kiln was situated in the area of village Naurangabad. The time of arrest of these appellants was stated to be around 10.00 p.m. on March 21, 1973. In the judgment cited by the learned counsel, the culprits were found in a school premises and some of their companions had run away. The time was 1.00 a.m. Their Lordships of the Supreme Court while acquitting the accused of that case, observed as follows :— ....

> "The mere fact that these persons were found at 1 a.m. does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself has, in its judgment, observed that the school was quite close to the market hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter, there is no legal evidence to support the charge under sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely

eliminated In these circumstances, therefore, we are unable to sustain the judgment of the High Court."

(6) It would be seen that the hide out of the appellants in the present case was a brick-kiln, whether deserted or otherwise, quite away from the abadi of village Naurangabad. In the circumstances, the hide out of the appellants cannot be termed as a place conspicuous where assemblage for the purpose of committing a dacoity would have rendered the appellants to a grave risk. What their Lordships of the Supreme Court inferred in that case was that if persons would assemble in a conspicuous place, their presence would arise suspicion. The facts that the then appellants were found in a school building near a town gave rise to the inference that they had perhaps collected to murder somebody or to commit some other offence but not of dacoity. The facts in the instant case are clearly distinguishable from those facts. That judgment can be of no avail to the appellants; rather by distinction it clarifies what the prosecution intends to convey and wants it proved.

(7) Sohan Singh (PW 2) is a member panchayat of the village and though he denied that he had appeared as a prosecution witness ever for the police, he stood contradicted by the production of Exhibits DB & DC, copies of his statements in Criminal Courts, revealing that his claim in that direction was wrong. The trial Judge gave him a clean chit on the premises that on that score alone he could not be doubted. That reasoning by itself is perhaps not sound unless it is aided by the factor that he being a member of the panchayat would normally have to be available as a public man to perform public duties in many spheres. It is the intrinsic worth of the evidence of the witness which has to be seen. Reading his evidence as a whole, no blenish can be found out as to why he rendered service to the police and that too against the appellants with whom he had no animus. Sukhpal Singh (PW 3) was declared hostile and his evidence can be of no value to the prosecution. However, evidence of A.S.I. Kartar Singh (PW 8) and Sub-Inspector Rajbir Singh (PW 9) alone unaided by the evidence of any witness of the public would establish complicity of the appellants with the crime. It is difficult to say how such large number of weapons and ammunition came in the hands of the police to be planted on the appellants. It is immaterial that the appellants stand acquitted of the charge under section 25 of the Arms Act because each one of them was not held to be exclusively in possession of the respective

weapon assigned to him. The prosecution wanted the Court to believe that at the time of arrest each one of them was asked to pick up his respective weapon and then hand it over to Sub-Inspector Rajbir Singh (PW 9). That process, on the face of it, would have been very risky. The acquittal of the appellants for the said charges, however, would not recoil on the bulk recovery of the weapons at the time of their arrest with their hands up. Rest is a matter of inference especially when no explanation is forthcoming from the appellants as to how they came by the aforesaid weaponry. Thus for all those circumstances the inference, legitimately deducible is that the appellants had assembled there with the purpose of committing dacoity. The view taken by the trial Judge was right and deserves to be affirmed.

(8) For the foregoing reasons, this appeal fails and is hereby dismissed.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

HAQIQAT SINGH,—*Petitioner.*

versus

ADDITIONAL DIRECTOR and others,—*Respondents.*

Civil Writ Petition No. 3384 *of* 1979.

March 16, 1981.

East Punjab Holdings (Consolidation and Fragmentation) Act (50 *of* 1948)—*Section* 42—*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules* 1949—*Rule* 18—*Petition under section* 42—*No specific order of any authority challenged—Challenge directed only against the preparation, confirmation or repartition under the scheme—Bar of Limitation created by rule* 18—*Whether applicable to such a petition.*

Held, that from an analysis of the various provisions of East Punjab Holdings (Consolidation and Fragmentation) Act, 1948 it is apparent that preparation and confirmation of the scheme, repartition of holdings in accordance with the scheme or in other words implementation of the scheme and the passing of the orders on hearing objections and then appeals against those orders are three different connotations and concepts envisaged by the Act. By no stretch