

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-AS-40-2016

Date of Decision: 09.02.2023

SANDEEP SOOD

...Appellant

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mohd. Yousaf, Advocate
for the appellant.

Mr. Harjinder S. Sidhu, A.A.G., Punjab.

Mr. Vaibhav Sehgal, Advocate
for respondents No.2, 4 and 5.

HARSH BUNGER, J. (ORAL)

The instant appeal has been filed against the impugned judgment dated 01.06.2012 passed by learned Additional Sessions Judge, Ludhiana, whereby the appeal filed by the respondents-accused against the judgment of conviction and order of sentence dated 23.12.2009 passed by learned Judicial Magistrate Ist Class, Ludhiana, has been allowed and they have been acquitted of the charges framed against them.

2. Brief facts of the case are that one FIR No.61 dated 20.03.1998 was registered under Sections 447, 457, 380, 506 and 120-B of the Indian Penal Code at Police Division No.6, Ludhiana, on the complaint of appellant-Sandeep Sood, who stated that he had taken on rent some part of property bearing No.432, Industrial Area-B, Ludhiana, from one Gurdev Kaur wife of Karnail Singh @ Rs.2000/- per month and he started the firm namely, Maha Luxmi Tools Manufacturers and he had installed ten

new and three old machines therein. As per the complaint, Anil Sood and Sunil Sood, who are the real brother, met the complainant in the month of January and February and asked him to start a partnership business with them; however, he did not agree to it. As per the complainant, on 04.03.1998, he got *status quo* order from the Court of Civil Judge (Junior Division), Ludhiana, restraining Anil Sood and Sunil Sood, for not to interfere in his business. It was alleged that on 19.03.1998, at around 8:30 p.m., the complainant had gone to his house after locking his factory premises, and on 20.03.1998, at 9:00 a.m., when he went to his factory, he saw that the locks of the factory were missing and the locks were changed. When the complainant enquired for the same from Anil Sood and Sunil Sood, then they told him that the factory belongs to them. It is alleged that he came to know that the machines installed in his factory were stolen by Anil Sood, Sunil Sood, Balwinder Singh and Surinder Singh and the locks were broken by said persons. Accordingly, the afore-said FIR was registered.

3. Upon completion of the investigation, challan was presented in Court and on finding a *prima facie* case against the accused, they were charge-sheeted under Sections 120-B, 380, 457, 506 of the Indian Penal Code, to which, the accused pleaded guilty and claimed trial.

4. The prosecution, in support of their case, examined the following witnesses :-

1. PW-1 Kashmira Singh
2. PW-2 Paramjit Singh
3. PW-3 Harbans Singh
4. PW-4 Sandeep Sood (complainant)
5. PW-5 ASI Avtar Singh
6. PW-6 Gurdev Kaur

7. PW-7 *Krishan Kumar Sood*
8. PW-8 *Sukhwinder Singh*
9. PW-9 *Harmail Singh*

5. After the closure of evidence by the prosecution, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, wherein all the incriminating evidence appearing against them was put to them and they denied all the allegations and pleaded innocence by stating false implication in this case.

The accused examined the following witnesses :-

1. DW-1 *Gurdeep Singh*
2. DW-2 *Anil Sood*
3. DW-3 *Sukhwinder Singh*
4. DW-4 *Mohinderpal*
5. DW-5 *Harmander Singh*
6. DW-6 *Surinder Singh*

6. Learned trial Court, vide its judgment dated 23.12.2009, after appreciating the evidence on record, convicted the accused only for offence under Section 411 read with Section 34 of the Indian Penal Code, and also vide separate order of sentence of even date i.e. 23.12.2009, sentenced the accused to undergo rigorous imprisonment for three years under Section 411 of the Indian Penal Code and fined Rs.3,000/- each. It was further ordered that in default thereof, the convicts shall undergo rigorous imprisonment for one month. The trial Court, while convicting the accused, has held as under :-

“39. From the evidence brought on record by the prosecution and the evidence of the accused being unreliable as discussed above, the ownership of the machines in favour of the complainant stands proved. It also stands proved that complainant had taken part of tenancy of plot no.432, Industrial Area-B, Ludhiana

from Gurdev Kaur. However, prosecution has not examined any witness who has witnessed the theft being committed by the accused at the night time which was necessary to prove the ingredients of section 380/457/120-B IPC. The recovery of the machines has been effected on the basis of statement under section 27 of the Indian Evidence Act of the accused which are very much relevant and admissible. The stands taken by the accused as discussed above does not sound to be reliable. Although, accused were charged sheeted under section 120B/380/457/506 of the IPC. However, as per section 221(2) and 222(2) Cr.P.C as the offence under section 411 IPC is punishable with lesser punishment, there is no need for amendment of charge. From the evidence brought on record by the prosecution and in view of the presumption as envisaged under section 114 of the Indian Evidence Act and accused having failed to initiating any action against the complainant or the police official if they have allegedly taken away their property, the ingredients of section 411 IPC read with section 34 IPC are fulfilled and accordingly all the ingredients of section 411 IPC read with 34 IPC stands proved against all the accused and as such all the accused namely Surinder Singh, Balwinder Singh, Anil Sood and Sunil Sood are convicted under Section 411 read with Section 34 of the IPC only. Let the convicts be heard on the question of sentence.”

7. Being aggrieved against the afore-said judgment of conviction and order of sentence dated 23.12.2009, respondents No.2 to 5-convicts preferred an appeal before the Court of learned Additional Sessions Judge, Ludhiana; which came to be allowed vide judgment dated 01.06.2012 and respondents No.2 to 5, were acquitted of the charges framed against them.

8. The complainant has now filed the instant appeal challenging the judgment dated 01.06.2012 passed by the learned Additional Sessions Judge, Ludhiana.

9. Learned counsel for the appellant has submitted that the learned lower Court has erred in law and facts in allowing the appeal filed by respondents No.2 to 5, by ignoring the evidence available on the record. It is submitted that the order passed by the trial Court was well reasoned and justified and accordingly, no interference was required to be made. Accordingly, it is prayed that the judgment passed by the lower Appellate Court may be set aside and that of the trial Court may be restored.

10. On the other hand, learned counsel for respondents No.2, 4 and 5 (respondent No.3 is stated to have expired, as has been recorded in order dated 12.12.2014, passed by this Court), has supported the judgment passed by the lower Appellate Court by submitting that the learned trial Court had erred in convicting respondents No.2 to 5 under Section 411 read with Section 34 of the Indian Penal Code, without there being any sufficient evidence/material available on the record. It is submitted that the judgment of acquittal passed by the lower Appellate Court, is well reasoned, justified and does not call for any interference by this Court. Accordingly, prayer for dismissal of the present appeal has been made.

11. I have heard learned counsel for the appellant-complainant and gone through the impugned judgment dated 01.06.2012 passed by learned Additional Sessions Judge, Ludhiana and also the case file.

12. A perusal of the judgment passed by the learned trial Court would show that respondents No.2 to 5, were although charge-sheeted under Sections 120-B, 380, 457, 506 of the Indian Penal Code; however, they were convicted only under Section 411 read with Section 34 of the

Indian Penal Code. As per the learned trial Court, the prosecution had not examined any witness, who had witnessed the theft being committed by respondents No.2 to 5, at the night time, which was necessary to prove the ingredients of Sections 380, 457, 120-B of the Indian Penal Code.

13. Further, learned lower Appellate Court has re-appreciated the entire evidence available on the file and has returned the following findings :-

“16. After going through the evidence led by the prosecution, I am of the considered opinion that prosecution has failed to prove the above said ingredients to establish the offence U/s 411 IPC. Even if for the sake of arguments it is assumed that the case property i.e. the machines were recovered from the possession of the accused on the basis of their disclosure statement u/s 27 of Indian Evidence Act, but the mere possession by the accused will not give rise to the inference that they were the receiver of stolen property. No inference can be drawn in the absence of any proof that property in possession of accused had earlier been stolen. Prosecution was required to lead cogent and convincing evidence to prove that the property alleged to be recovered from the accused had earlier been stolen. It is alleged by the complainant that he is the owner of 13 machines out of which 10 were new and three were old and that he had kept those machines in the tenanted premises of the complainant bearing plot No.432, Industrial Area A, Ludhiana. The said plot was taken on rent by the complainant Sandeep Sood from PW-6 Gurdev Kaur wife of Karnail Singh and that complainant was running his factory in the said plot in the name and style of Maha Luxmi Tool Manufacturers being the proprietor of the same.

17. Thus, the question which is required to be seen in this case is whether complainant Sandeep Sood has been able to prove on record that the alleged machines were kept in his factory, hired by him, at plot No.432 Industrial Area B, Ludhiana and that whether it was complainant who was running the said factory in the name and style of Maha Luxmi Tool Manufacturers and that whether he had purchased those machines from different purchasers. For this, the most relevant testimony is of PW-6 Gurdev Kaur from whom complainant Sandeep Sood alleges to have taken the premises on rent. PW-6 Gurdev Kaur has categorically deposed in her examination in chief that she had given the plot No.432 Industrial Area B on rent to the wife of accused Anil Kumar and to Sunil Sood @ Rs.4000/- per month. This witness has supported the case of the accused and has not deposed in favour of the prosecution. This witness was never declared hostile by the prosecution meaning thereby prosecution relies upon the testimony of this witness. Learned lower court erred in holding that the evidence of PW-6 Gurdev Kaur cannot be read against the complainant as she is the mother of two of the accused namely Balwinder Singh and Surinder Singh. Prosecution knowing this fact examined PW-6 Gurdev Kaur as prosecution witness and when she did not support the case of the prosecution, prosecution did not bother to get her declared hostile. During her cross-examination she has categorically deposed that this plot was never given on rent to complainant Sandeep Sood, rather as per the agreement Ex. DC she is receiving rent from the accused persons. The prosecution fails to establish on the record that the premises from which the machines were alleged to be stolen were ever in possession of complainant Sandeep Sood faced with

this situation, it cannot be said that machines were stolen from the possession of Sandeep Sood.

18. Regarding the ownership of the machines, the cross-examination of PW-2, PW-3, PW-4 and PW-8 is quite relevant. PW-2 Paramjit Singh has deposed in his examination in chief that in the year 1997-98 he sold one Lathe machine to the owner of Maha Luxmi Tool Manufacturers namely Sanjeet Sood vide bill No.154 dated 24.1.98. He has proved on record the photocopy of the bill as Ex.PC. Learned APP for the State relying upon the testimony of this witness has tried to prove on record that bill Ex.PC shows that one lathe machine recovered from the possession of the accused was in fact owned by complainant Sandeep Sood. It is relevant to mention here that although this witness has deposed in his examination in chief that he sold one Lathe Machine to the owner of Maha Luxmi Tool Manufacturers but there is nothing on the record to show that complainant Sandeep Sood is the proprietor of Maha Luxmi Tool Manufacturers. Even if for the sake of arguments, it is assumed that PW-2 had sold any Lathe Machine to Maha Luxmi Tool Manufacturers, it nowhere proves that Sandeep Sood complainant had purchased the said machine being proprietor of above said manufacturers. This is particularly so when PW-4 Sandeep Sood has replied in his cross-examination that he had no documentary proof regarding his proprietorship of MahaLuxmi Tool Manufacturers and that he did not furnish any proof to the police regarding his being proprietor of MahaLuxmi Tools Manufacturers. Even perusal of Ex.PC would reveal that name of the proprietor of Maha Luxmi Tool Manufacturers is nowhere mentioned. Even the original of Bill of Ex.PC has not come on the record. Thus, this document is of no help to the prosecution as it nowhere shows that

complainant Sandeep Sood purchased one Lathe Machine from PW-2. Not only this, the alleged Lathe Machine purchased by complainant was never produced in the testimony of PW-2 Paramjit Singh. He has replied in the cross-examination that he cannot seen any machine in the court.

19. Next comes the testimony of PW-3 Harbans Singh. Again this witness is silent regarding the name of the person to whom he alleges to have sold one milling machine. He has merely proved on record the photocopy of the receipt as Ex.PW-3/A and has tried to prove on record that vide this receipt he received Rs.27,000/- from M/s Maha Luxmi Tool Manufacturers for selling one milling machine. Again the name of the proprietor is not mentioned on this receipt/bill Ex.PW3/A. As already stated above there is nothing on the record to show that complainant Sandeep Sood is the proprietor of M/s Maha Luxmi Tool Manufacturers, therefore, this document no where leads to the inference that complainant Sandeep Sood purchased the milling machine from PW-3 more so, when the said machine was not produced in the testimony of PW-3 and he has even failed to identify the signatures on the invoice Ex.PW3/A. Thus, the testimony of this witness also does not advance the case of prosecution.

20. Next comes the testimony of PW-8 Sukhjinder Singh. He has tried to prove on record the bill No.57 as Mark A vide which he alleges to have sold 7 machines to M/s Maha Luxmi Tool Manufacturers and bill No.59 mark B vide which he alleges to have sold three machines to Luxmi Tools and bill No.63 Mark C vide which he alleges to have sold one machine to Maha Luxmi Tool Manufacturers. It is relevant to mention here that all the above said bills have been marked and not proved as per law. The witness admits

in the examination in chief itself that he has not brought the original record of the above said bills. In his cross-examination he has admitted it as correct that in the above said marked Bills A to C, the name of Sandeep Sood is no where mentioned and that he does not know Sandeep Sood and that he has not seen any of the above said machines in the court. He has gone to the extent of admitting that earlier when he came to depose in the court he saw some of the machines lying outside but there was no such machine which was sold by him to M/s Maha Luxmi Tool Manufacturers. Thus, the cross examination of this witness clinches the matter.

21. Prosecution has miserably failed to prove on record that any of the above said 13 machines were ever purchased by Sandeep Sood complainant. Learned Lower Court erroneously held that Sandeep Sood is the owner of these machines. Neither the ownership nor the possession of these machines with the complainant has been proved on the record. Not only this even the identity of the case property is doubtful. For this, I would like to refer to the cross examination of PW-4 Sandeep Sood complainant who has admitted that he has not brought any of the above said 13 machines in the court after his examination in chief. Accused has been deprived of his valuable right of cross-examining the prosecution witness regarding the case property as the same was never produced in the cross examination of any prosecution witness. PW-4 has admitted in the cross-examination that ASI Avtar Singh did not paste any identity chit on the machine alleged to be recovered by him from the accused. He did not get the identification of the machines from any manufacturer in his presence. He has further replied that he does not know whether the machines are identical or different in context to their identity. His evidence regarding the

theft of the machines is hearsay as he has replied in the cross examination that he came to know that the machines installed in his factory were stolen by accused persons. He has further admitted it as correct that no FIR or any particular of the case has been mentioned on the machine. He has further admitted that he has not given any description or detail in the FIR. He has not brought original bills in the court. Thus, the above said replies of complainant PW-4 Sandeep Sood in his cross examination leads to the only inference that complainant is neither in possession of any bill of the above said machines nor he could show his possession over the said machines. The identity of the machines produced in the court is also doubtful. None of the witness has identified those machines never produced in the cross examination of any of the witness.

22. Whether the accused have been able to prove on record their ownership over the above said machines was not the question to be decided in the present case. The only question to be seen is whether the complainant has been able to prove on record his ownership and lawful possession over the case property which he has failed to prove. There is nothing on the record to show that the case property was the stolen property. There is not an iota of evidence that the accused persons retained the said property dishonestly or that they received the property knowing or believing that the property was the stolen property. In the absence of the proof of any of the above said ingredient, I am of the considered opinion that learned lower court has committed grave error in convicting accused persons U/s 411 IPC. Accordingly, the judgment and conviction order passed by learned lower Court is set aside and the appeal filed by appellants/accused stands accepted. Accused stand

accordingly acquitted. Learned lower court record be returned back. Appeal file be consigned to the record room.”

14. A perusal of the findings recorded by the lower Appellate Court would reveal that respondents No.2 to 5, have been acquitted, by returning the following findings :-

(a) The prosecution had miserably failed to prove on record that any of the 13 machines were ever purchased by the complainant (Sandeep Sood).

(b) The complainant is neither in possession of any bill of the machines nor he could show his possession over the said machines.

(c) PW-4 Sandeep Sood (complainant) had admitted that he had not brought any of the 13 machines (which were alleged to be stolen) in the Court after his examination-in-chief.

(d) The identity of the machines produced in the Court was also held to be doubtful. None of the witnesses had identified those machines as the one recovered from respondents No.2 to 5.

(e) There is nothing on record to show that the case property was the stolen property

(f) There was no evidence that respondents No.2 to 5 (accused persons) retained the said property dishonestly or that they received the said property knowingly or believing that it was the stolen property.

15. After going through the findings recorded by the lower Appellate Court, this Court is of the considered view that the learned lower Appellate Court has taken a reasonable and probable view on appreciation of evidence.

16. Hon'ble Apex Court in the case of ***Ashok Kumar v. State of Rajasthan 1991(1) RCR (Criminal) 14 : 1991(1) SCC 166***, has held that

interference in an appeal against acquittal would be called for only if the judgment under appeal is perverse or is based on misreading of evidence.

17. Learned counsel for the appellant-complainant has failed to point out any misreading of evidence by the trial Court.

18. It is a settled law as has been held in *C. Antony v. K.G. Raghavan Nair, 2002(4) RCR (Criminal) 750* that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused. In the cases of acquittal, there is double presumption in his favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible. In this case, no exceptional circumstances have been brought forth so as to warrant interference in the impugned order passed by the lower Appellate Court.

19. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the appellant.

20. Thus, no interference is warranted in the impugned order dated 01.06.2012 passed by learned Additional Sessions Judge, Ludhiana. Accordingly, finding no merit in the contention of the learned counsel for the appellant, the appeal is hereby dismissed.

February 09, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No