

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

CRR-1132-2007 (O&M)
Date of Decision: 08.02.2023

KARAMVEER GIRI AND ANOTHER

...Petitioners

Versus

THE STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sushil Bhardwaj, Advocate
for the petitioners.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J. (ORAL)

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 29.03.2007 and 03.04.2007, respectively passed by the learned Judicial Magistrate Ist Class, Ambala City, whereby, the petitioners have been convicted under Section 411 of the Indian Penal Code, in case FIR No.130 dated 11.05.2005, registered under Sections 457 and 380 of the Indian Penal Code (for short 'IPC') at Police Station, Baldev Nagar. Challenge is also to the judgment dated 06.06.2007 passed by the Additional Sessions Judge (Fast Track Court), Ambala vide which the appeal filed by the present petitioners was dismissed, however, the sentence imposed upon them was reduced to 18 months.

Briefly stated, an FIR came to be registered on the statement of complainant-Jagir Singh son of Diwan Singh, resident of House No.157/1, Jail Land Ambala City, stating therein that he is owner of M/s Bhagwati Gas

Services and had constructed a Gas Godown in the field of Village Jandli. It is further alleged that on 11.05.2005 A.M., when his storekeeper namely Ram Kailash went to open the Godown, he found the lock of gate of surrounding wall in broken condition and upon his information, the complainant went there and found that internal lock of Godown was also broken and several cylinders were missing from there. Upon checking the stock register, the complainant found that 80 filled and 175 empty cylinders were stolen. Thereafter, investigation in the case was carried out and the site plan of place of theft, Exhibit PW4/C, was prepared and the accused-petitioners along with their co-accused Ramu, Bishambar, Rajinder alias Ganja and Naveen son of Mangat Ram were arrested. Accused Vinod Kumar suffered a disclosure statement Ex. PW2/A on 25.05.2005 during interrogation and got recovered 100 gas cylinders, which were taken into police custody vide recovery memo Ex.PW2/B and site plan of place of recovery Ex.PW2/C was prepared. Accused Karamveer also suffered disclosure statement Ex.PW2/F on 25.05.2005 and got recovered 55 gas cylinders from the disclosed place, which were taken into police custody vide recovery memo Ex.PW2G. The remaining accused namely, Ramu, Bishambar, Rajinder alias Ganja and Naveen son of Mangat Ram, also got effected similar recoveries but their case is not being discussed by this Court as they are not before this Court in the present petition.

Upon finding a *prima facie* case, the trial Court framed charges against accused under Section 411 IPC, to which the accused pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined as many as six witnesses namely HC Naresh Kumar as PW-1, HC Ranjit Singh

as PW-2, Jagir Singh as PW-3, ASI Rameshwar Dass as PW4 and ASI Ram Udit as PW5 and evidence of the prosecution was closed by Court order vide order dated 14.02.2007.

Statements of the accused were recorded under Section 313 Cr.P.C. All the material incriminatory evidence were put to them by explaining the same to which they denied in toto and pleaded false implication. In defence, no evidence was produced.

The trial Court framed the following point of determination:-

- (i) *Whether on 03.06.2005 within the area of Police Station Baldev Nagar, dishonestly retained in their possession stolen property i.e. 165 cylinders belonging to the complainant knowing or having the reason to believe the same to be the stolen property and thereby committed offence under Section 411 of IPC.*

After considering the material/evidence available on record, the learned trial Court returned the following findings :-

11. *“xxx xxx I am of the considered view that the prosecution has been able to prove its case by leading, cogent evidence. Complainant while appearing as PW3 has categorically stated that on 11.05.2005, his storekeeper namely Ram Kailash went to his Godown after taking keys of the same and found that lock of boundary was of the Godown and lock of the Godown have also broken. He has also categorically deposed that when he went to the Godown, found that 80 filled cylinders and 175 empty cylinders have been stolen and he made complaint Ex.PW4/A to police. From his evidence, it is fully proved that on 11.5.2005, 255 cylinders were stolen from his Godown which he has constructed in the field of Village Jandli Ambala. No suggestion to this witness regarding ownership or stolen of the cylinders on 11.05.2005 was put, it is amply proved*

that 225 cylinders were stolen by complainant Jagir Singh on 11.5.2005.

12. Now further question arises as to whether these stolen gas cylinders were recovered from the accused or not. In order to prove the same, the prosecution has examined HC Naresh Kumar as PW1 who has categorically deposed that on 29.5.2005 accused Rajinder suffered disclosure statement Ex.PW1/A regarding stealing of the cylinders from the Bhagwati Gas Godown along with other co-accused and on the basis of that disclosure statement got recorded the cylinders which came to his shares and same were taken into police custody. He has also proved disclosure statement Ex.PW1/B made by accused Naveen Kumar. Similarly, PW2 Ranjit Singh HC has also proved disclosure statement of accused Vinod Kumar Ex.PW2/A and recovery memo Ex.PW2/B by which 100 cylinders were got recovered by the accused Vinod on the basis of disclosure statement Ex.PW2/A. This witness have further proved disclosure statement Ex.PW2/D suffered by accused Ramu regarding theft of the cylinders and has proved recovery memo Ex.PW2/A by which five gas cylinders were taken into police custody on the basis of disclosure statement PW2/D. He further proved the disclosure statement Ex.PW3/F made by accused Karamvir and recovery memo Ex.PW2/G by which 55 gas cylinders were taken into police custody on the basis of disclosure statement Ex.PW2/F, he has also proved the seizure memo by which the registration copy of DL was taken in possession. PW4 ASI Rameshwar Dass has proved formal FIR ex. PW4/B and endorsement Ex. PW5/A as well as site plan of place of theft Ex.PW4/C. Similarly, case of the prosecution has been proved by ASI Ram Udit who has proved the disclosure statement of accused Rajinder Ex.PW5/A and recovery memo

ex.PW5/B on the basis of which one gas cylinder was recovered on the basis of disclosure statement Ex.PW2/A. He has also proved the disclosure statement Ex.PW2/A. He has also proved the disclosure statement Ex.PW5/D made by Bishamber Dass and recovery memo Ex.PW5/E by which two cylinders were got recovered by the accused on the basis of his disclosure statement Ex.PW5/A. He has also proved the recovery memo Ex.PW5/F by which accused Naveen got recovered one cylinder on the basis of his disclosure statement. The prosecution has proved by cogent and reliable evidence that the gas cylinders owned by complainant Jagir Singh were stolen during the night time on 11.5.2005 and out of which some cylinders were got recovered by the accused on the basis of their respective disclosure statements. Their disclosure statement regarding the recovery of stolen property is relevant and admissible under section 27 of the Evidence Act. The evidence of the prosecution has been consistent, credit worthy blemishless and unshattered. Although all the PWs were cross examined at length however no material infirmity could be brought from their cross examination. There are some minor discrepancies and contradictions are natural and do not go to the roots of the case rather strengthen the credibility of the witness reason being if such like contradictions or discrepancies do not occur in the testimonies of witnesses then evidence of the witnesses will be rendered as parrot link evidence and it will not be trustworthy evidence in the eye of law.

13. xxx xxx xxx

14. It was contended by ld. Counsel for the accused that the investigating officer in this case has not been examined and thus the accused are entitled for benefit of doubt. This contention of ld. Counsel for the accused is not acceptable to this court. Admittedly, investigating

officer in this case has not been examined. However, the evidence brought on record clearly shows that the gas cylinders were stolen and same were recovered from the accused. Under these circumstances, non examination of the investigating officer does not play significant role as his evidence. It was further contended by ld. Counsel for the accused that no independent witness has joined and alleged recoveries have been effected from the house of the accused for which two independent witnesses are required. However again these contention of ld. Counsel for the accused does not hold the field. In the present case the recoveries have been effected on the basis of disclosure statement and no house search was carried out by the police under these circumstances, in my consider view that non joining of the independent witnesses at the time of effecting recovery will not be fatal to the prosecution. It is also settled law that when evidence of the prosecution is otherwise reliable and credit worthy then non joining of the independent witness will not cause any serious dent to the prosecution case.

15. It was further contended by ld. Counsel for the accused that the case property has not produced in the case and accused are also entitled for benefit of doubt on the ground of non production of the case property. This contention of ld. Counsel for the accused does not carry the water. When PW3 Jagir Singh appeared in the witness box the ownership of the same was not challenged and he has also deposed that the same was taken on superdari by him. When the identity of the ownership of the case property is not disputed then, in my considered view non production of the case property would not be fatal to the prosecution case and no benefit can be extended to the accused on this ground.

16. In view of the above discussion, it is held that the prosecution by leading cogent and reliable evidence

under Section 411 IPC. Hence, accused are held guilty for commission of offence under Section 411 of IPC. ...”

Thus, vide judgment of conviction and order of sentence dated 29.03.2007 and 03.04.2007, respectively, the Judicial Magistrate Ist Class, Ambala City, convicted and sentenced the petitioners for offence under Section 411 IPC to undergo rigorous imprisonment for two years each and to pay fine of Rs.1500/- each.

The appeal filed by the present petitioners came to be dismissed by the Court of Additional Sessions Judge, Ambala vide its judgment dated 06.06.2007 however, the sentence imposed by the trial Court Magistrate was reduced to 18 months.

Hence, the petitioners have filed the present revision petition before this Court.

At the very outset, learned counsel for the petitioners stated that he does not propose to challenge the impugned judgment and order of sentence on their merits, however, he prayed for modification of the order of sentence for the period already undergone by the petitioners.

In this regard, it has been submitted that the FIR for the alleged incident was lodged in the year 2005 and the petitioners have suffered the agony of trial/appeal/revision for all these years. It is also submitted that the petitioners were granted bail/suspension of sentence and they have never misused the said concession. It is further submitted that petitioners are not previous convicts and they are the sole bread winner of their family.

On the other hand, learned counsel for the respondent- State of Haryana has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the

custody of the petitioners as well as having never misused the concession of bail/suspension of sentence has not been disputed by the learned State counsel.

I have heard learned counsel for the parties and perused the entire material available on record, as well as judgment of the trial Court and lower Appellate Court.

Perusal of the judgments passed by the learned Courts below show that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 411 IPC. The Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioners has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioners is upheld.

Vide separate order dated 03.04.2007 passed by the Judicial Magistrate Ist Class, Ambala City, the petitioners have been sentenced as under: -

<i>Sr. No.</i>	<i>Offence under Section</i>	<i>Punishment</i>
1.	411 IPC	Rigorous imprisonment for a period of two years each with fine of Rs.1500/- each and in default thereof, further undergo simple imprisonment for a period of one month each.

The abovesaid sentence was reduced to 18 months by the Additional Sessions Judge, Ambala, vide order dated 06.06.2007 passed in Criminal Appeal No.49 of 2007.

It is noticed that vide order dated 05.05.2008 passed by this Court, the sentences of both the petitioners were suspended, keeping in view the fact that they remained in custody for over 11 months, out of the sentence of imprisonment for 18 months.

This Court in ***CRR-1019-2022*** titled as ***Harbans vs State of U.T. Chandigarh*** decided on ***06.01.2023***, while considering the issue of quantum of sentence, in the light of various judgments rendered by Hon'ble the Apex Court in ***Mohd. Giasuddin vs State of AP AIR 1977 SC 1926; Deo Narain Mandal vs State of UP 2004(7) SCC 257; Shyam Narain vs State (NCT of Delhi) 2013(7) SCC 77; Kokaiyabai Yadav vs State of Chhattisgarh 2017(13) SCC 449 and Ravada Sasikala vs State of A.P. AIR 2017 SC 1166***, held that the criminal justice jurisprudence adopted in the country is not retributive but reformatory and corrective.

Considering the above-stated position of law and also the facts and circumstances of this case, since the FIR in question was lodged in 2005; the petitioners have suffered the agony of trial/appeal/revision for more than 17 years; they had undergone actual sentence of 11 months out of the total sentence of imprisonment for 18 months (as recorded in order dated 05.05.2008); they are the sole bread winner of their respective families and are not involved in any other case, accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to them is reduced to the period already undergone by them.

Accordingly, the present revision petition is partly allowed. The conviction of the petitioners is upheld. However, the sentence awarded vide order dated 03.04.2007 passed by the Judicial Magistrate Ist Class, Ambala City and reduced by the Additional Sessions Judge, Ambala vide judgment

dated 06.06.2007 is modified and the sentence of 18 months rigorous imprisonment awarded to the petitioners is reduced to the period of sentence already undergone by them. The bail bonds of the petitioners shall stand discharged.

This petition is disposed of in above-said terms.

Pending miscellaneous application/s, if any, shall also stands disposed of, in view of the above-said order.

February 08, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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