

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

**CRA No. S-1168-SB of 2008
DECIDED ON: SEPTEMBER 16, 2015**

ANIL KUMAR @ TOTA

.....APPELLANT

VERSUS

UT CHANDIGARH

.....RESPONDENT.

2.

CRA No. S-997-SB of 2008

NARESH KUMAR

.....APPELLANT

VERSUS

UT CHANDIGARH

.....RESPONDENT

AND

3.

CRA No. S-1036-SB of 2008

RUPINDER PAL SINGH

.....APPELLANT

VERSUS

UT CHANDIGARH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether the Reporters of the Local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or?**
- 3. Whether the judgment should be reported in the digest?**

Present:- Mr. B.S. Bhalla, Advocate
for the appellant in CRA No. S-1168-SB of 2008.

Ms. Sumanjit Kaur, Advocate for
Mr. Matvinder Singh, Advocate
for the appellants in CRA No. S-997-SB of 2008
and CRA No. S-1036-SB of 2008

Mr. Sukant Gupta, APP, UT Chandigarh.

JASPAL SINGH, J

This Judgment will dispose of CRA No. S-1168-SB of 2008 filed by Anil Kumar @ Tota, CRA No. S-997-SB of 2008 filed by Naresh Kumar and CRA No. S-1036-SB of 2008 filed by Rupinder Pal Singh, as all these appeals emanate from the common judgment of conviction and order of sentence dated May 13, 2008 whereby, appellants were convicted for offence under Section 411 of Indian Penal Code (for short "IPC") and were sentenced to undergo rigorous imprisonment for a period of three years with fine of ₹1000/- each and in default, thereof, to further undergo RI for 15 days each. Appellant Anil Kumar @ Tota was also convicted for offence under Section 25(1) of Arms Act and was sentenced to undergo RI for a period of three years with fine of ₹1000/- and in default, thereof, to further undergo RI for 15 days. The substantive sentences of Anil Kumar @ Tota was ordered to run concurrently and period of detention already undergone by convicts was ordered to set off from their substantive sentences of imprisonment.

2. Briefly, stated the case of the prosecution as unfolded by complainant-Raj Kumar is that on October 15, 2003 at about 9.45 PM he was present alongwith Geeta in the house of Sanjay Duggal. After parking his car in front of his house, Sanjay Duggal took out his bag containing necessary articles. He was about to close the door of his car when a person sitting on the pillion seat having a pistol in his fired a shot aiming towards Sanjay Duggal with an intention to kill him. The said shot resulted into infliction of injuries on the person of Sanjay Duggal. Meanwhile, the person having pistol snatched the bag from the hands of injured Sanjay Duggal and both of them fled away on the motorcycle. In the meanwhile, Raj Kumar as well as his sister Geeta rushed the injured Sanjay Duggal to the hospital for treatment. The aforesaid statement of Raj Kumar Ex.PA was recorded and after making the endorsement Ex.PA/1, it was sent to Police Station on the basis of which a formal FIR Ex.PE was put into black and white thereafter, investigation was put into motion.

3. During investigation, investigating officer visited the spot, prepared the site plan of the place of occurrence; arrested the accused and subjected them to custodial interrogation; recovered certain articles belonging to Sanjay Duggal from them in pursuance of their disclosure statements; took those articles in possession.

4. After completion of investigation and other requisite formalities, report under Section 173(2) Cr.P.C was presented against the Mohd. Yusuf, Naresh Kumar, Anil Kumar @ Tota, Rupinder Pal Singh and Davinder Singh in the Court of learned Jurisdictional Magistrate to face trial under Sections 392, 307, 397, 34, 212, 216, 216-A IPC and Sections 25 and

27 of Arms Act. The present appellants as well as their accomplices Mohd. Yusuf and Davinder Singh were tried for commission of afore-said offences by learned Additional Sessions Judge, Chandigarh. However, after appraisal of evidence brought on record by the prosecution as well as defence and bestowing due consideration to the various submissions, acquitted Mohd. Yusuf and Davinder Singh for the alleged commission of offences under Sections 212, 216 and 216-A IPC whereas, all the accused namely Mohd. Yusuf, Naresh Kumar, Anil Kumar @ Tota, Rupinder Pal Singh and Davinder Singh were also acquitted for the commission of offences under Sections 392, 307, 397, 34 and 120-B IPC. Similarly, except Anil Kumar @ Tota, all other accused were also acquitted under Section 25 of the Arms Act.

5. Disheartened from their conviction and sentence, Anil Kumar @ Tota, Naresh Kumar and Rupinder Pal Singh preferred their respective appeals challenging their conviction and sentence, which are being disposed of vide this common judgment.

6. While assailing the conviction and sentence awarded to Anil Kumar @ Tota under Section 25(1) of Arms Act as well as Section 411 IPC, it has been argued with vehemence by learned counsel for the appellant(s) that the same are absolutely against the evidence available on file and settled cannons of law. In fact, prosecution has failed to bring home the guilt of any of the appellants either under Section 411 IPC or for commission of offence under Section 25(1) of Arms Act. After the appraisal of evidence brought on record by the prosecution as well as defence, all the appellants as well as their co-accused namely Mohd. Yusuf and Davinder Singh have already

been granted the benefit of doubt and acquitted under Sections 392, 307, 397, 34 and 120-B IPC as well as Sections 212, 216 and 216-A IPC as prosecution had miserably failed to establish the identity of any of the accused facing the trial.

7. Moreover, Anil Kumar @ Tota has been convicted under Section 411 IPC simply on the ground that after his arrest and subjected to interrogation. He suffered disclosure statement to the effect that he has kept concealed the registration certificate of the car, Master Card of HSBC, discount card of Hotel Monarch and a family photograph of Sanjay Duggal. A recovery of ₹1,50,000/- has also been effected at his instance in pursuance of his disclosure statement. But to the utter surprise, the said amount was never claimed either by the complainant or by the injured Sanjay Duggal or by any of the accused. As such, it has been ordered to be confiscated to the State. In fact, all these documents have been foisted upon Anil Kumar @ Tota just to connect him with the crime. Undisputably, Anil Kumar @ Tota was not arrested at the spot. As per case of prosecution, he was arrested on May 25, 2004 i.e. after about 02 months of the alleged occurrence. Thus, on the basis of the alleged recovery of afore-said documents at the instance of Anil Kumar @ Tota, he cannot be fastened with any liability. Moreover, recovery of a .9mm pistol alongwith 4 live cartridges from the appellant-Anil Kumar @ Tota has also been planted upon him by the investigating agency just to connect him with the crime because neither any spent cartridge(s) were recovered from the spot nor it was sent to Forensic Science Laboratory.

8. On the other hand, learned State counsel has contended that

there is no infirmity, illegality or impropriety in the impugned judgment of conviction and order of sentence. The same are based upon cogent, convincing and reliable evidence. Accordingly, he prays for the dismissal of the appeal(s).

9. No doubt, the identity of either Anil Kumar @ Tota and of his co-accused could not be established by the prosecution, as neither injured Sanjay Duggal nor Raj Kumar-complainant or Geeta identified any of the accused, even during trial. The offence complained of against Anil Kumar @ Tota is only in the shape of his disclosure statement suffered by him, in pursuance of which, he allegedly got recovered registration certificate of the car, Master Card of HSBC, discount card of Hotel Monarch and a family photograph of Sanjay Duggal. The recovery of articles is fully established by the prosecution by adducing cogent and convincing evidence and that all these documents belong to injured Sanjay Duggal.

10. As far as recovery of .9mm pistoal alongwith 4 live cartridges is concerned, it was also got effected by Anil Kumar @ Tota in pursuance of his disclosure statement suffered by him during his custodial interrogation, regarding which, he could not produce any permit or licence. Moreover, the pistol so recovered is a prohibited one, which is not easily available in the market, even to the licence holder. The recovery of pistol as well as 4 live cartridges has been proved from the documents and testimony of various witnesses including the investigating officer. The said pistol was got recovered by Anil Kumar @ Tota from the area of Government tubewell and Oil Depot adjoining to the cremation ground on his demarcation. Recovery of a pistol as well four live cartridges stood amply proved from the statement

of PW-22/KIP Singh, which further finds corroboration from the testimony of PW-19 HC Mahi Pal Singh. Though all these witnesses have been thoroughly examined by learned defence counsel but nothing fruitful to the prosecution could be wrenched out. Immediately, after the recovery of a pistol alongwith four live cartridges as well as the case property, it was converted into parcel and sealed by Investigating Officer with his seal and were deposited with the concerned MHC in the Malkhana with seals in tact. The pistol and four live cartridges were found to be in working condition when mechanically tested by HC Mahi Pal Singh on June 04, 2004. Report in this regard is proved on record as Ex.PW17/A. Thus, it can be said that there is cogent, convincing and sufficient evidence available on file so far as the conviction of Anil Kumar @ Tota under Section 411 IPC as well as under Section 25(1) of Arms Act is concerned. Further, Anil Kumar @ Tota has also been rightly sentenced to RI for a period of 3 years under Section 411 IPC as well as under Section 25(1) of Arms Act by learned Additional Sessions Judge, Chandigarh, as he was involved in a number of other similar cases and is a habitual offender. He does not deserve any leniency in the matter of sentence.

11. Accordingly, the conviction and sentence of Anil Kumar @ Tota awarded by learned trial Court are upheld, as this Court does not find any infirmity or illegality therein. Thus, appeal i.e. ***CRA No. S-1168-SB of 2008 preferred by Anil Kumar @ Tota*** being devoid of any merit is dismissed.

12. Now coming to an appeal preferred by ***Naresh Kumar i.e. CRA No. S-997-SB of 2008***. Undoubtedly, during deposition neither PW-9 Geeta

nor his brother Raj Kumar-PW-6 nor PW-8 Sanjay Duggal could establish the identity of any of the accused including Naresh Kumar at the spot or during trial. Consequently, Naresh Kumar as well as his co-accused were acquitted under Sections 392, 307, 397, 34 and 120-B IPC. Similarly, Naresh Kumar as well as Rupinder Pal Singh have also been acquitted under Section 212, 216 and 216-A IPC as prosecution failed to establish that they harboured the culprits. In fact, prosecution failed to establish the allegations that either appellant-Naresh Kumar or their co-accused had committed robbery or committed to the murder of Sanjay Duggal. Naresh Kumar-appellant has been convicted under Section 411 IPC just on the ground that he got recovered a voter identity card belonging to Sanjay Duggal in pursuance of his disclosure statement allegedly suffered during investigation.

13. Here, it would be pertinent to mention that Naresh Kumar was not arrested on the spot. He was arrested in this case on December 15, 2003 i.e. after about 2 months of the alleged occurrence. It is highly improbable that after about 2 months of the occurrence, he would retain voter card; that too, belonging to Sanjay Duggal and would keep the same in a safe custody with him. Moreover, there is no specific evidence, even in the testimony of Sanjay Duggal that at the time of occurrence, the bag allegedly snatched by the un-identified persons contained his voter card. Otherwise also voter card is such an article, which cannot be termed to be a valuable security. No person can derive any benefit by possessing the voter card of another person. Moreover, during investigation at any point of time the said voter card has not been got identified from Sanjay Duggal after its alleged recovery at the

instance of Naresh Kumar. Since the voter card cannot be termed to be a valuable security, it is of no use or benefit for Naresh Kumar. As such, he cannot be fastened with liability of Section 411 IPC. The said voter card appears to have been planted by the investigating agency just to connect him with the crime. The recovery of which is otherwise highly improbable. No other incriminating article has been recovered from Naresh Kumar either to connect him with the crime or with his co-accused Anil Kumar @ Tota.

14. Thus, this Court is of the considered view that appellant-Naresh Kumar deserves the benefit of doubt. Accordingly, appeal preferred by him is allowed and consequently, he is acquitted of the charge.

15. Now coming to appeal preferred by **Rupinder Pal Singh i.e. CRA No. S-1036-SB of 2008**. He has been convicted and sentence under Section 411 IPC just on the ground that after his arrest in the Month of December, 2003, he was subjected to custodial interrogation during which he suffered disclosure statement Ex.PW12/D unfolding that he has kept concealed the driving licence of Sanjay Duggal. Subsequently, in pursuance thereof, he is alleged to have got recovered the same on his demarcation, which was taken into possession by the police vide memo Ex.PW-12/C. The said driving licence was found to be belonging to Sanjay Duggal, on the basis of report Ex.PW12/M, obtained from the Registering and Licensing Authority, Chandigarh. Except the driving licence alleged to have been recovered from the possession of Rupinder Pal Singh, there is no other evidence to connect him with the alleged crime. The driving licence also cannot be termed to be a valuable security to attract offence under Section 411 IPC. The holder thereof, cannot derive any kind of benefit from it. It

cannot be used by a person other than the person in whose name it has been issued. There is nothing on record to suggest as to why a person would retain the driving licence belonging to other(s), even after the expiry of a period of two months of the occurrence, especially when any such article which could connect a person with any offence alleged to have been committed by him. No prudent person would keep such an incriminating article with him. Rather, this Court is of the considered view that driving licence appears to have been padded up by the investigating agency just to show the connection of Rupinder Pal Singh with the crime. Moreover after his arrest, he has suffered a lot. Since the driving licence cannot be said to be a valuable security, Section 411 IPC cannot be attracted just to punish him. Thus, finding that there is no incriminating evidence against Rupinder Pal Singh or he cannot be said to be in possession of stolen valuable security, his conviction and sentence under Section 411 IPC is not sustainable in the eyes of law.

16. Accordingly, the same is set aside by way of acceptance of his appeal preferred by him and he stands acquitted of the charge

17. As an upshot of all discussions above, appeal preferred Anil Kumar @ Tota is dismissed whereas, other appeals preferred by Naresh Kumar and Rupinder Pal Singh are allowed. Consequently, Naresh Kumar and Rupinder Pal Singh are acquitted of the charge.

(JASPAL SINGH)
JUDGE

SEPTEMBER 16, 2015
sham