

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Appeal -D No.125-DB of 2015(O&M)

Date of Decision: March 31, 2015.

U.T. Chandigarh

..... APPELLANT (s)

Versus

Manga

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Gagandeep Singh Wasu, Addl.PP, U.T.
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Union Territory of Chandigarh has preferred this appeal impugning judgment dated 02.06.2014 passed by the learned Additional Sessions Judge, Chandigarh acquitting respondent – Manga son of Tej Pal of the charge framed against him for offence punishable under Section 413 IPC.

FIR No.55 dated 21.02.2014 was registered under Sections 411/413 IPC at police station Sector 26, Chandigarh on a complaint (Ex.P1) made by Pawan Kumar son of Gagan Saran. Complainant – Pawan Kumar stated that he had parked his motorcycle bearing registration No.CH04-B-4864 Bajaj Platina near the market of Sector 27, Chandigarh at about 9.00 a.m. on 17.02.2014. On

returning from the market at about 11.00 a.m., he found his motorcycle to be missing. He searched for it but could not locate the same. Thereafter, the abovesaid FIR was registered.

ASI Balbir Singh in the course of investigation laid a Naka (barricade) on 22.02.2014 near St. Kabir Public School, Sector 26, Chandigarh. Complainant Pawan Kumar present at the spot alongwith the police officials pointed out his motorcycle being brought by one boy, who on seeing the police, tried to escape but was apprehended. He revealed his name to be Manga son of Tej Pal i.e., respondent-accused. Respondent-accused was arrested on his failure to give a satisfactory explanation about his possession of the motorcycle. The said motorcycle was taken in possession by the police vide memo Ex.P3.

On completion of investigation, Challan/report under Section 173 Cr.P.C. was present. Respondent-accused was charged for the offence punishable under Section 413 IPC. He pleaded innocence and claimed trial.

Learned trial court on going through the evidence on record acquitted the accused-respondent of the charge against him after concluding that the prosecution has failed to prove its case beyond reasonable doubt.

Learned counsel for appellant – Union Territory Chandigarh submits that there is enough evidence on record pointing to the guilt of respondent-accused. It is contended that respondent-accused has been convicted in seven other cases in connection with his dealings with stolen property. Therefore, offence under Section 413 IPC is duly proved against him. Respondent is habitual in dealing with the stolen property, therefore, his acquittal is wholly unjustified.

We have heard learned counsel for the appellant and gone through the file.

Section 413 IPC reads as under:-

“413. Habitually dealing in stolen property.-- Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Learned counsel for the appellant is unable to deny that there is no evidence on record to prove that respondent-accused was convicted in seven cases in connection with his dealings in stolen property. There is not one judgment of conviction much less seven which has been placed on record to show the commission of offence as alleged by the prosecution. The prosecution relied upon statement of PW1 Shiv Kumar to the effect that the accused was convicted in seven cases. The said statement is not the primary evidence, which is required to be adduced by the prosecution in support of the charges against the accused. Therefore, inordinate reliance on a verification report (Ex.P1) proved by HC Shiv Kumar is misplaced and uncalled for. Evidence of PW1 HC Shiv Kumar or that of PW2 Amit Kumar son of Chaman Lal can be of no avail to connect the respondent with the alleged offence.

Furthermore the complainant – Pawan Kumar has not supported the prosecution version. He has specifically deposed that respondent-accused is not the person from whom the recovery of motorcycle was effected. In these circumstances the prosecution case falls like a house of cards. There is no independent witness to support the prosecution version. Prosecution has indeed

failed to prove its case beyond reasonable doubt.

Keeping in view the facts and circumstances we find no infirmity or illegality in the impugned judgment. Learned counsel for the appellant is unable to point out any strong, substantial or compelling reasons which would warrant interference by this Court. Possibility of another view cannot be a ground to set-aside the acquittal of respondent in the absence of any perversity or illegality in the impugned judgment.

Consequently, this appeal being devoid of any merit is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 31, 2015.

‘om’