

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. **CRR No. 2372 of 2015 (O&M)**
Date of Decision : 21.08.2015

Kali @ Angrejo

.....Petitioner

Versus

State of Punjab

....Respondent

2. **CRR No. 2512 of 2015 (O&M)**

Surjit Kaur

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Mr. B.S. Jatana, Advocate
for petitioners in CRR No. 2372 of 2015.

Mr. P.S. Dhaliwal, Advocate
for petitioner in CRR No. 2512 of 2015.

Mr. Gurveer Sidhu, AAG, Punjab.

R.P. Nagrath, J.

This order will dispose of **CRR No. 2372 of 2015** (**Kali @ Angrejo vs. State of Punjab**) and **CRR No. 2512 of 2015** (**Surjit Kaur vs. State of Punjab**) as these arise out of the concurrent findings of conviction of the petitioners recorded by both the Courts below under Section 411 of Indian Penal Code (IPC). The charge originally framed against the petitioners was under Section 379 IPC on 06.01.2014. On 12.04.2013, learned trial Court also added charge under Section 411 IPC but that seems to have been framed as an alternative offence.

2. Since there was no direct evidence against the petitioners of committing offence of theft, they were acquitted of the charge under Section 379 IPC but convicted under Section 411 of the said Code. Learned trial Court awarded the petitioners six months of rigorous imprisonment and fine of ₹ 200/- each, in default to further undergo simple imprisonment for 15 days each under Section 411 IPC, which has also been affirmed by learned Appellate Court.

3. FIR No. 133 dated 18.11.2010, Police Station Sardulgarh was recorded by Davinder Kumar PW-1. On 18.11.2010, Davinder Kumar had gone to bus-stand Sardulgarh alongwith his wife and child for boarding bus for going to the village of his in-laws. They kept their bag containing luggage on the ground and waited for arrival of bus. Two ladies were sitting there. It was about 03.30 p.m. that the complainant and his wife Geeta Rani went to the nearby water tap as their child was feeling thirsty by leaving the bag there. Then, they found zip of the bag lying open. The bag was checked and they found the purse containing gold chain to be missing. Name of Geeta Rani wife of the complainant, was inscribed outside the purse and inside the purse letters 'DK' were written with a sketch pen. The purse was containing gold chain weighing $2\frac{1}{2}$ tollas worth ₹ 45,000/-. It was suspected that those two ladies had committed theft of the articles belonging to the complainant. The complainant learnt names of those ladies to be Kali @ Angrejo and Surjit Kaur. The police party met complainant near bus-stand where the statement Ex. PA was recorded by the

complainant and the same was sent to police station on the basis of which FIR Ex. P-2/C was registered.

4. The complainant came to know that those ladies had gone towards the road trisection of Sardulgarh. The police party first prepared site plan of the place of theft Ex. PW-2/D. Thereafter, they proceeded towards the road trisection of Sardulgarh and found those ladies present near the temple along the road waiting for a bus. They were identified by the complainant and apprehended.

5. On search of Surjit Kaur-petitioner in CRR No. 2512 of 2015 gold chain was recovered from her closed fist. From Kali @ Angrejo-petitioner in CRR No. 2372 of 2015, purse was recovered from her right hand on which name of the wife of complainant and initials 'DK' with the sketch pen were found written. The articles were made into parcels and taken into possession vide memo Ex. PB.

6. The prosecution examined complainant as PW-1 and SI Sukhdev Singh (since retired) as PW-2. The prosecution was unable to bring other evidence which was thus closed by order of learned trial Court on 29.05.2013.

7. During their examination under Section 313 Cr.P.C., petitioners denied all the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication. No evidence was led by them in defence.

8. Learned Courts below convicted and sentenced the petitioners as aforesaid.

9. I have heard learned counsel for the petitioners,

carefully perused judgments of both the Courts below and records.

10. Prosecution version about the theft and recovery has been consistently stated by the complainant as PW-1 who is supported by the investigating officer. Despite so much of elaborate and lengthy cross-examination the witnesses have withstood the test of scrutiny. It was not the plea of petitioners that the complainant had any ulterior motive or any axe to grind for falsely implicating them in the present case. It was not even suggested that petitioners were known to the complainant before the present FIR.

11. Learned counsel for petitioners contended that according to the complainant, his statement was recorded first time on 18.11.2010 and also on two other occasions i.e. 19.11.2010 and 22.11.2010. With regard to statement on 22.11.2010, the complainant stated that on that day he produced bill of purchase of gold chain from the jeweller. Learned counsel contended that there is nothing to suggest why further statement of complainant was recorded on 19.11.2010. I find that the investigating officer was not questioned on this aspect of the case about recording of the statement of complainant again on 19.11.2010 for availing any advantage.

12. There are certain factors appearing in cross-examination of the complainant which make the entire story as quite natural. PW-1 stated that he did not know both the petitioners before this case. He has tried to say that names of petitioners were mentioned in the FIR as he may have enquired

from the people at the bus-stand. So it is not improbable to say that the witness could inform the police that those ladies had proceeded towards the road trisection of Sardulgarh where the police party immediately went and apprehended the petitioners.

13. It is quite important to notice that recovery was made on the same day when the theft took place and there was no scope of any manipulation of planting recovery upon petitioners. PW-1 made a positive assertion with regard to identity of both the ladies from whom the recovery was made. These ladies were sitting in fact near the bag kept in the bus-stand by the complainant. Since recovery was made just within 1½ or 2 hours, learned Courts below have rightly held that the petitioners knew the property recovered from them to be stolen property.

14. In cross-examination, PW-1 stated that search of both the petitioners was conducted in his presence by lady police official. A private person cannot be so technical on this aspect and having said so, would make the prosecution version quite truthful.

15. Learned counsel for petitioners contended that lady police official was not examined. I do not think that non-examination of lady police official would make any dent in the prosecution story in any way.

16. Learned counsel for petitioners referred to contradiction in the evidence. PW-1 stated that the police party was on foot when they met him whereas PW-2 stated that they were going in the official gypsy No. PB-08K-6094 towards the

bus-stand where complainant met them. PW-2 in cross-examination stated that they had apprehended the accused persons at about 05.00 p.m.

17. Learned Appellate Court while analyzing the contentions on behalf of petitioners observed as under:-

“13. Keeping in view the aforesaid essentials, now adverting to the case in hand, it is pertinent to mention that complainant Davinder Kumar, at whose instance, the proceedings were initiated, has categorically deposed about himself alongwith his wife Geeta Rani, to be present at Bus Stand, Sardulgarh alongwith the child and a big cloth bag. He also deposed about the manner of going to the hand-pump for intake of water for their child and on return, they found that zip of big bag was open and further a small purse of his wife, on which, name of his wife Geeta Rani was written in English and on whose, inner side, alphabets 'D.K' were written, was found to be missing and the gold chain in the said purse was also found to be missing. He has also deposed about the presence of two women nearby, at the time, when they had gone away to the hand-pump and they were not present, when the complainant had returned back. He had named Surjit Kaur and Kali alias Angrejo and they had gone towards Sirsa Crossing, Sardulgarh. Soon

after the missing of articles, action was initiated, on the basis of statement, so got recorded by complainant and Sukhdev Singh, Investigating Officer, has categorically deposed about having swung into action instantaneously, after recording of statement of the complainant, which is Ex. PA (also proved as Ex.PW.2/A). He also deposed about the said women, to have been spotted at the Sirsa Crossing, while standing near the Mandir, at the instance of the complainant. They were intercepted in the present case and from their possession, the gold chain as well as purse, having inscription of words "Geeta Rani" and impression 'DK' were recovered and the same were taken into possession vide memo Ex.PB. Also, the photo copy of the bill of gold chain has been proved as Ex.PD. From the aforesaid evidence, it becomes amply clear that the purse and the gold chain had been recovered from the possession of the accused and soon before the possession of the accused, the said purse and chain were in possession of the complainant and his wife. Even, the ownership of the purse and gold chain stands amply established, as the purse bears the name of wife of complainant as well as impression 'DK' and the bill of the gold

chain is in the name of the complainant. In the light of the same, presumption under Section 114 (a) of the Indian Evidence Act operates against both the accused, who have not been able to account for their possession. In the light of the same, the commission of offence under Section 411 IPC stands amply established.....”

18. Both the Courts below came to conclusion that charge under Section 411 IPC against petitioners stands proved by proper appreciation of evidence. There is little scope of interference in exercise of revisional jurisdiction of this Court unless it is shown that there has been misreading of evidence or some material available on record has been ignored. There is no merit in the instant revisions and the same are dismissed.

19. However, keeping in view the facts and circumstances of the case, petitioners being ladies and that the incident took place about five years ago, the period of sentence is reduced from six months to five months of rigorous imprisonment, maintaining the imposition of fine and the default clause.

August 21, 2015
jk

(R.P. NAGRATH)
JUDGE