

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.42 of 2015

Date of Decision: April 23, 2015

Love Kumar son of Subhash ChandPetitioner

Versus

State of HaryanaRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sunil Polist, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the judgment dated 25.11.2014 rendered by the Court of Additional Sessions Judge, Kaithal vide which the appeal against the judgment of conviction dated 6.8.2014 and order of sentence dated 8.8.2014 passed by the Court of Chief Judicial Magistrate, Kaithal, convicting the present revision petitioner for the offence under Section 411 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for a period of two years and a fine of ₹500/-, has been dismissed.

2. Briefly stated, case of the prosecution was that FIR in question was registered upon the complaint of Birender Kumar, JTO, Telephone Exchange, Kaithal as regards a theft having been committed on the intervening night of 6/7.1.2010 with regard to 20 pairs of cable having length of 40 meters from the street near

Telephone Exchange, Mata Gate, Kaithal. Investigation having been carried out, accused/present petitioner was arrested. Challan was presented and a copy of the same was furnished to the accused as per mandate of Section 207 of the Code of Criminal Procedure. A prima facie case having been made out, accused was charged for offence under Section 411 of the Indian Penal Code, to which he pleaded not guilty and claimed trial. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded in which he denied all allegations and pleaded innocence. However, no evidence was led by him in his defence.

3. Prosecution to prove its case examined complainant Birender Kumar as PW1, Krishan Kumar Mishra as PW2, Sub Inspector Parmanand as PW3, Sub Inspector Ramphal as PW4.

4. Learned trial Court convicted and sentenced the present revision petitioner as aforenoticed. Feeling aggrieved against the said judgment, an appeal was filed before the Court of Sessions, which was also dismissed vide impugned judgment. Hence the present revision petition.

5. It has been argued that the trial Court has overlooked the aspect of there being unexplained delay in registration of the FIR. Further, it is contended that the recovery of the stolen material/cable is doubtful as no independent witness was joined from the locality at the time of recovery. Furthermore, even the ownership of the case property is stated to have not been proved on the case file. On the basis of such submissions, it is contended that the judgment of conviction cannot sustain.

6. It is a settled principle of law that in its revisional jurisdiction, this Court is not to re-appreciate and reappraise the evidence unless and until it comes to the conclusion that the findings recorded by the trial Court are perverse, illegal and erroneous on account of mis-reading of evidence.

7. With regard to delay in lodging of the FIR, the same stands explained as complainant Birender Kumar, JTO, PW1 deposed that he had on the very next day reported the theft to the SDO concerned and who, in turn, had communicated to him by way of a letter to report the matter to the police. Under such circumstances, delay in registration of the FIR cannot be construed to be fatal to the case of the prosecution. Furthermore, complainant Birender Kumar being the JTO concerned was competent to identify the case property as the stolen property belonged to BSNL and which he has done so. Recovery of the cables was effected in the presence of the Investigating Officer Sub Inspector Parmanand upon having received a secret information that accused/present petitioner was trying to sell copper as well as cables, and upon receiving such secret information, accused was apprehended and bundles of wires as also copper were recovered from his possession. Case property was duly produced in Court which included copper, Exhibit P1, and cables, Exhibit P2. The same were duly identified by the complainant. Non-examination of independent witness at the stage of recovery would be of no consequence. Birender Kumar, JTO has deposed in the present case in the capacity of an official witness and the veracity of his deposition cannot be doubted as

there would be no occasion to infer that he was in any way inimical towards the accused or had any previous enmity with him.

8. The Courts below while relying upon cogent and convincing evidence of prosecution witnesses have rightfully come to the conclusion that the prosecution has proved its case against the accused beyond reasonable shadow of doubt.

9. The judgments rendered by the Courts below do not suffer from any illegality and infirmity and the same are liable to be upheld. Hence, the instant revision petition is dismissed being devoid of any merit and the judgment of conviction and order of sentence passed by the learned trial Court is upheld.

10. Revision petition is dismissed.

April 23, 2015

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)