

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.A-1793-MA of 2015 (O & M)
Date of decision: 25.07.2016

State of Haryana

....Applicant

Vs.

Nawab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MS. JUSTICE LISA GILL

Present: Mr. Surender Singh Pannu, DAG, Haryana.

S.S.SARON,J.

The criminal miscellaneous application has been filed by the Haryana State seeking leave to appeal against the acquittal of respondents - Nawab and others by the learned Additional Sessions Judge, Fatehabad vide order dated 22.01.2015. Along with the appeal, Criminal Miscellaneous Application No. 35585 of 2015 has been filed seeking condonation of 173 days delay in filing the application seeking leave to appeal.

The prosecution filed police report ('challan') against eight accused who were sent up for trial on the complaint made by Shankar Lal on 24.03.2011. Out of the eight accused, Shahud (accused No.8) was declared a proclaimed person vide order dated 17.12.2014; besides, Bhagi (accused No.3) died and proceedings against him abated vide order dated 17.01.2014. Now there are six respondents in the application against whom leave to appeal against their acquittal has been prayed for.

Shankar Lal (complainant) came at the Police Station, Sadar Fatehabad on 24.03.2011 and filed an application regarding theft of his cows. According to the complainant, he was a resident of village Bhuthan Kalan and member of the Shri Krishna Gaushala. On the intervening night of 23/24.03.2011 Satish, Chowkidar (PW-7) and Parhlad came to him and informed that 23 cows and two oxen had been stolen by some unknown persons. The cattle had been taken in two 'Canter' vehicles. FIR for the offences punishable under Sections 457 and 380 of the Indian Penal Code ('IPC' – for short) was registered. During investigation, SI/SHO Bijender Singh added the offence under Section 307 IPC and arrested the accused Nawab and Net Ram (respondents No.1 and 2). They both made disclosure statements regarding the offence of theft being committed along with Rawta (respondent No.4), Atma (respondent No.3) and Bhagi (accused No.3 - who has since died). They also disclosed that four-five more men were also with them. They informed that while they were transporting eight cows in two 'Canter' vehicles then they had an accident with a Police 'Gypsy' parked at the barricade that was set up on the Bhuna - Fatehabad G.T. Road. They further disclosed that they also threw stones at the policemen on account of which the front glass pane of the 'Gypsy' vehicle was broken.

Further investigation in the case was conducted by Shri Ramesh Kumar, HPS, who on 09.04.2011 deleted the offences under Sections 457 and 380 IPC. Further investigation was then

handed over to SHO Bijender Singh, Police Station, Sadar Fatehabad. Later on Atma (respondent No.3) and Bhagi (accused No.3) were arrested. They on interrogation disclosed the names of Nawab (respondent No.1), Rawta (respondent No.4), Pandu (respondent No.6) and Tahir (respondent No.5). They also disclosed that seven-eight more persons were also with them. When they tried to commit theft of eight cows from the Gaushala, then Chowkidar of the Gaushala woke up. He was caught hold of by Tahir (respondent No.5) and Rawta (respondent No.4). He was threatened to keep quiet else he would be shot at. He also corroborated the disclosure statements earlier made by the accused, who were arrested, which were regarding the accident that had been engineered with the Police 'Gypsy' so as to kill the police personnel. Rawta (respondent No.4) was also arrested. He made a similar disclosure statement. Besides, Tahir (respondent No.5) also made a similar disclosure statement after he was joined in the investigation by getting his production warrants. He (Tahir) informed that apart from him, Bhagi (accused No.3), Atma, Nawab, Net Ram, Rawta, Pandu (respondents No.3, 1, 2, 4 and 6 respectively), Shahud (PO) and Juber were also with them at the time of stealing cows. Tahir (respondent No.5) also disclosed that he was carrying a pistol at that time and they held out threats to the Chowkidar with it. They transported the cows in a 'Canter' vehicle. Then they kept them in a barbed wire enclosure. The cows were sold by Juber etc. and more details about them could be disclosed by them

only. The 'Canter' vehicle that was used was got recovered. One of the 'Canter' vehicle was that of Shahud (P.O.) who disclosed that they committed similar thefts at Jind and Rewari districts. They also fired on the Tohana Police Party in April 2011 when they were transporting cows. Pandu (respondent No.6) was arrested in another case and his production warrants were got issued in this case. He also gave a similar account of the incident. He further stated that Rs.1500/- came to his share. Out of the said amount, he could get Rs.1000/- recovered; besides, demarcate the sites from where they lifted the cows. Case property was got recovered from him. Site of the incident was got demarcated and recoveries effected. During investigation, the offence under Section 307 IPC was deleted. The accused were sent up for trial by filing a police report ('challan').

The respondents were charged for having committed offences punishable under Section 395 read with Section 149 IPC; besides, Tahir (respondent No.5) was also charged for the offence under Section 25 of the Arms Act, 1959.

The prosecution examined several witnesses. The complainant - Shankar Lal appeared as PW-8. He stated that few years back Chowkidar of Krishna Gaushala, Bhuthan Kalan, whose name he did know, came to him and informed him about the theft of cows and bullocks from the 'Gaushala'. In this regard, he moved an application (Ex.P9).

Satish Kumar, Chowkidar was examined as PW7. He corroborated the statement of the complainant regarding the

incident. He stated that on the said night, he along with Parhlad were taking care of a cow, who had delivered a calf at that time. At about 1.00 a.m., they heard some noise and saw eight-ten persons standing outside the gate of the Gaushala. He called Parlad from outside and one of those persons caught hold of him and held out a threat that he would be killed. He also put a pistol on his head. They took away 23 cows and two oxen which were put in two 'Canter' vehicles.

The learned trial Court observed, that in the examination in chief, Satish Kumar, Chowkidar (PW-7) stated that the accused persons present in the court were those, who took away the cows and oxen from the Gaushala but his testimony in this regard could not be believed as the accused persons had come during night and no test identification parade was conducted by the Investigating Officer and they had been identified by the complainant for the first time in the court. Besides, Satish Kumar Chowkidar (PW-7) admitted in his cross-examination that the accused present in the court were not previously known to him nor given any description of physical features. Therefore, his testimony was held to be unreliable to hold the accused guilty on his alleged identification alone.

The learned trial Court observed that there was no mention of the registration number of the 'Canter' vehicle in which the accused persons had taken the cows and oxen and even their colours were not mentioned. There was no identification of the recovered 'Canter' vehicle from the accused

persons by Satish Kumar, Chowkidar (PW7) and Parlād the alleged eye witness of the incident to show that it was the same 'Canter' vehicle, which was allegedly used in the incident. Parlād, the other eye witness was in fact not even examined in the case.

Learned State Counsel has contended that on the basis of the disclosure statement of Pandu (respondent No.6) an amount of Rs.1,000/- was recovered from him (respondent No.6) vide recovery memo Ex.P-13 on 18.03.2012 and a sum of Rs.500/- was recovered from Shahud (accused No.8) vide recovery memo Ex.P23. This was held to be a very small amount which a person can carry.

HC Ravinder (PW2), who appeared as PW2, deposed that recovery of green colour 'Canter' vehicle was not effected from any of the accused during investigation. In fact, the same was taken from Police Station Tauru. The said 'Canter' vehicle was recovered in another case i.e. FIR No.258 of 2011 registered under Section 25 of the Arms Act. Therefore, no benefit of alleged recovery of 'Canter' vehicle vide recovery memo Ex.P4 can be given to the prosecution.

The findings and conclusions reached at by the learned trial Court are correct and even otherwise, there is nothing to show that the decision taken by the learned trial Court is manifestly so erroneous or unreasonable which a person properly advised on facts would not reach at. The learned trial Court having taken a possible view would not warrant interference by this Court.

Accordingly, the application seeking leave to appeal is declined.

Crl. Misc. No.35585 of 2015 which has been filed for condoning the delay of 173 days in filing the application for leave to appeal is only academic and the same is also accordingly dismissed.

(S.S. SARON)
JUDGE

(LISA GILL)
JUDGE

25.07.2016
A.Kaundal