

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

CRR-1352-2006 (O&M)
Date of decision: 11.11.2016

Chan Ram and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mrs.Aditi Girdhar, Legal Aid Counsel
for the petitioners

Mr.Sanjay K.Saini, Assistant Advocate General Haryana

SNEH PRASHAR, J.

The present revision petition has been filed assailing the judgment dated 19.5.2006 passed by learned Additional Sessions Judge, Kaithal dismissing the appeal filed against the judgment of conviction dated 19.4.2004 and order of sentence dated 21.4.2004 recorded by learned Sub Divisional Judicial Magistrate, Guhla vide which, petitioners were sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.400/- each and in default of payment of fine to further undergo rigorous imprisonment for one month for the commission of offence punishable under Section 411 of the Indian Penal Code.

Precisely, the story of the prosecution was that on 20.1.1999 a written complaint was given by Mohinder Singh s/o Ranjhha Ram,

resident of Guhla Rice Mill, Kaithal Road, Cheeka stating that he was having four buffalos in his 'Dera' and during the intervening night of 15/16.01.1999, some unknown persons had stolen one of his buffaloes that was purchased by him from Joginder Singh s/o Bakshish Singh for a consideration of Rs.15,000/-. He also stated that he had every reason to believe that the theft had been committed by Chan Ram s/o Balak Ram, who was seen wandering around the Dera.

Based on the complaint a case was registered and investigation was conducted by ASI Dharambir Singh. On 24.1.1999 the stolen buffalo was recovered from conscious possession of Chan Ram and Sarban Ram (petitioners). The complainant identified his buffalo and 'Khunta parade' was also conducted. The accused were arrested and after completion of investigation, a final report under Section 173 Cr.P.C. was presented in the Court.

The petitioners were charged under Sections 457 and 380 IPC, to which they pleaded not guilty and claimed trial. To substantiate its case, the prosecution examined four witnesses in all. After closure of evidence of the prosecution, separate statements of the accused as envisaged under Section 313 Cr.P.C. were recorded. They denied the allegations and pleaded their false implication.

On evaluating the evidence led by the parties and the submissions made by learned Public Prosecutor for the State and the defence counsel, learned trial Court finding that the prosecution has successfully proved the guilt of the petitioners, convicted and sentenced

them vide judgment / order dated 19/21.4.2004 as noticed above. Feeling aggrieved, the petitioners filed an appeal, which was dismissed by learned Additional Sessions Judge, Kaithal vide judgment/order dated 19.5.2006.

Being dissatisfied by the judgment of conviction and order of sentence, both the petitioners preferred the instant criminal revision.

The submissions made by Mrs.Aditi Girdhar, Legal Aid Counsel representing the petitioners and Mr.Sanjay K.Saini, Assistant Advocate General, Haryana have been heard and the record perused.

To begin with, learned counsel for the petitioners argued that although in the First Information Report, the complainant stated that he had purchased the buffalo from one Joginder Singh s/o Bakshish Singh for an amount of Rs.15000/- but no document/ receipt was produced by him during trial to prove his ownership qua the buffalo which was alleged to have been stolen. Learned counsel also asserted that no independent witness was examined by the prosecution to prove recovery of the alleged stolen buffalo from conscious possession of the petitioners. In the absence of independent corroboration, the testimony of PW1 complainant Mohinder Singh and PW2 Mangal Singh, who are near relatives and interested witnesses could not be made basis for conviction of the petitioners.

To support her arguments, learned counsel relied upon **Manjinder Singh vs. State of Punjab 2009(4) R.C.R.(Criminal) 919** and **Bharadwaj Singh vs. State AIR 1952 Cal. 616.**

The facts in hand are distinguishable from the facts of the cases relied upon by learned counsel for the petitioners. In the instant case, the ownership of the complainant qua the stolen buffalo was not questionable as the petitioners did not claim the buffalo to be owned by them. Otherwise also, in the First Information Report the complainant, besides stating about the theft of his buffalo during the night intervening 15/16.1.1999, had stated that he had every reason to suspect that his buffalo had been stolen by Chan Ram petitioner as he had been seen wandering around his house. The police effected a 'Naka' during which the petitioners, who were taking the buffalo by tying a rope around its neck, were apprehended. The complainant identified his buffalo. A 'Khunta parade' was conducted by the police during which the buffalo was left free and it walking independently, reached the house of the complainant. The statement of PW1 complainant Mohinder Singh to the said effect was corroborated by PW2 Mangal Singh and PW3 ASI Dharambir Singh. As far as theft of the buffalo from the house of the complainant is concerned, statement of the complainant was corroborated by his brother PW4 Kundan Ram. There is nothing on record that PW1 complainant Mohinder Singh and his witnesses had any reason to be hostile against the petitioners or to implicate them falsely.

From the consistent statements of the prosecution witnesses on all material particulars recovery of the buffalo, which the complainant stated was stolen from his house, is proved from the conscious possession of the petitioners. PW1 complainant Mohinder Singh, his

brother PW4 Kundan Ram and PW2 Mangal Singh may be related to each other but were the only relevant witnesses for proving the theft of the buffalo as well as recovery of the stolen buffalo from the possession of the petitioners. When they had no score to settle with the petitioners on any other count they were as good as independent witnesses. Merely for the reason that they are close relatives and interested witnesses, their statements cannot be disbelieved.

Accordingly, the conviction of the petitioners recorded by learned trial Court and affirmed by learned appellate Court is maintained.

Coming to the matter of sentence, as per the affidavits of Sanjeev Kumar. Deputy Superintendent, District Prison, Karnal indicating the details of custody of petitioners in the case in hand, placed on record by the State, there is no other criminal case pending against the petitioners. They had also never been involved in any criminal case prior to this case. In other words, admittedly, the petitioners are the first offenders. The case was registered in the year 1999 and at that time, petitioner No.1 Chan Ram was 27 years old and petitioner No.2 Sarban Singh was 19 years aged. They are now in middle age and are stated to be having young children, who are solely dependent upon them. At this juncture of life, in my considered opinion, it shall be expedient and in the interest of justice, if instead of sending them behind the bars, they are given the benefit of probation.

Accordingly, the petitioners are ordered to be released on

probation under Section 4(i) of Probation of Offenders Act for a period of one year subject to their furnishing required probation bonds to the satisfaction of learned Chief Judicial Magistrate, Kaithal. The bonds shall be furnished within one month from the date of receipt of the certified copy of this judgment, failing which the present revision petition shall be deemed to have been dismissed.

It is further directed that the petitioners shall keep peace and will bear good behaviour during the period of probation and will surrender before the Court as and when called upon to do so. In addition to the same, the amount of fine already deposited by the petitioners is converted into the litigation expenses.

The present criminal revision petition is disposed of accordingly.

11.11.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes/ No

Whether reportable?

Yes/ No