

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

**CRR No. 394 of 2007 (O&M)  
Date of decision: 29.03.2016**

Vikas Kumar

.... Petitioner

Versus

State of Haryana

.... Respondent

**CORAM: Hon'ble Mr. Justice P.B. Bajanthri**

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

Present: Mr. S.S.Dinarpur, Advocate for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

**P.B. Bajanthri, J.**

In this Criminal revision, petitioner has questioned the judgment dated 22.03.2004 passed by the Judicial Magistrate Ist Class, Jagadhri and the judgment dated 20.02.2007 passed by the Additional Sessions Judge, Jagadhri.

2. The petitioner was subjected to criminal proceedings in FIR No. 58 dated 16.03.1994 under Section 392 of IPC registered at Police Station Farakpur. The petitioner and co-accused Sanjay Kumar are sentenced to undergo RI for a period of 2 years and to pay fine of Rs.3000/- each under Section 392 IPC. In default of payment of fine they shall further undergo simple imprisonment for 6 months. The Additional Sessions Judge, Yamuna Nagar at Jagadhri affirmed the sentence awarded to the petitioner.

3. The brief facts of the case is that the petitioner alongwith three other persons, namely, Sanjay Kumar alias Khalnayak, Surinder Kumar alias Raju and Rajesh Kumar alias Kala was booked in a case FIR No. 58 dated 16.03.1994 under Section 392 IPC by the police of police Station Farakpur on the complaint made by complainant (PW1) Jagdish Mittar to the effect that on that day i.e. 16.03.1994 at about 8.15 P.M. he and his wife, namely Lajja Wati were watching T.V. at their house when somebody knocked at the door. He opened the door and saw four persons of the age group of 18-20 years standing there. While detailing their descriptions, it was further stated that they all entered in the courtyard of their house and told that they have come from Shastri Colony, Yamuna Nagar and asked for somebody's house. He (complainant) expressed ignorance. One of them asked for water. When he offered a glass of water to that boy, the remaining boys also asked for water. His wife went to the kitchen for bringing water. Three of them came near the door of their room and started watching T.V. The fourth one asked them to proceed from there. Thereafter, they all left the premises. As soon as, the complainant was bolted the entrance gate, then all the four boys returned and entered into the house. One of the boy who was wearing a blue coloured jacket had pointed pistol on his neck and asked him to handover whatever the complainant has. One of them caught hold of complainant's wife and asked her to go inside the house. He also pushed his wife on which his wife also pushed him and raised alarm upon which, they all ran away in the street and while fleeing they snatched gold ear-ring of his wife. On their raising alarm, number of persons gathered there and all the four culprits fled away. They can identify them if produced before them. On this statement of complainant Ex.PA, the present case was

registered. During the course of investigation, accused Rajesh alias Kala was arrested in the case on 12.04.1994, he made disclosure statement and based on such disclosure statement, remaining three accused were also arrested and they all, too, made their respective statements. After completion of the investigation, the final report under Section 173 Cr.P.C. was presented in the Court.

4. Learned counsel for the petitioner contended as follows:-

- (i) Name of the petitioner is not reflected in the FIR.
- (ii) No recovery
- (iii) Petitioner's name was taken on the basis of disclosure statement made by one Sh. Harish Kumar.
- (iv) PW2 Lajjawati did not identify the petitioner on her own but at the instance of police personnel.
- (v) There is no corroborative evidence.
- (vi) Identification of property is not in accordance with the procedure.

5. Learned counsel for the petitioner further contended that the alleged incident relates back of the year 1994. The petitioner has undergone sentence for a period of 2 months and 6 days and he is not involved in any other case. Therefore, petitioner be released on probation. In so far as identification of article is concerned, he relied on decision of this Court reported in 1998(2)RCR (Criminal) 349 titled as ***Mahabir Versus State of Haryana***. Relevant extract of the judgement is as follows:-

*“This brings us to consider that evidence regarding the recovery of articles. The ornaments which were allegedly recovered at the instance of these various accused, were sought*

*to be identified before PW22-Inder Singh Ranjan, Tehsildar. The identification of articles in this case is not done by mixing them with similar articles. In our opinion, therefore, the identification of the articles in such a case, hardly deserves any credence. The witnesses have also not clarified the reason why they claimed the identification of these articles. In our opinion, the recovery of such articles, therefore, hardly helps the prosecution case.”*

6. Thus it was submitted that the trial Court and appellant Court erred in convicting the petitioner.

7. Learned State counsel argued that it is true that name of the petitioner is not reflected in the FIR and in disclosure statement his name was cropped up amongst others. The petitioner was identified by PW2-Lajjawati and the article was recovered from one Sh. Harish who has disclosed that petitioner and Sanjay Kumar have sold article to Harish Kumar. Therefore, it is evident that the petitioner has committed offence under Section 392 and the trial Court has rightly convicted him. It was also contended that when PW2 identified stolen ear rings which has been recorded by the trial Court. An extract of the same is as follows:-

*“21. The identification of the stolen property was conducted by PW2 Lajjawati in the presence of PW11 Tarmohan Singh on 30.04.1994. PW11 has categorically stated that on that day Smt. Lajjawati had identified the stolen ear rings in his presence and the proceedings regarding identification Ex.PB was prepared. The proceedings Ex.PB shows that the stolen ear rings were mixed in four similar ear rings and out of them, the stolen ear rings were identified by PW2 Smt. Lajjawati. It proves that the ear rings sold by the accused and recovered from the shop of PW5 Harish Kumar were owned by PW2 Smt. Lajjawati, wife of complainant Jagdish Mitter”.*

8. Learned State counsel pointed out that the petitioner has denied

in participating in the test identification parade which indicates that petitioner was involved in the alleged offence. In this regard, he relied on Para 14 of the trial Court judgement. An extract of the same is as follows:-

*“14. On the other hand, learned Public Prosecutor contended that there is sufficient evidence on the file to establish the identity of the accused. The accused-appellant has denied participating in the test identification parade which raises and adverse inference against him. He has been identified in the court by PW1 Jagdish Mitter complainant and PW2 Lajjawati, both victims. He contended that the identification of the accused in the court is the substantive evidence. The accused-appellant had remained present in the house of the victims for a considerable period. So they can be easily identified in the court”.*

9. Heard learned counsel for the parties.
10. In view of the facts and circumstances, the trial Court rightly convicted, the petitioner therefore, no interference is called for by this Court. It is true that name of the petitioner was not reflected in the FIR and his name has been cropped up based on the disclosure statement of one Shri Harish Kumar. Identification of the petitioner made by PW2-Lajjawati and so also identification of stolen article by her, it is evident that the petitioner has committed offence under Section 392 of IPC for which corroborative evidence may not necessary for the reasons that the petitioner has not made out any ground as to why he has been implicated unnecessarily. In other words, PW1, PW2, PW5 and police persons did not have any grouse against the petitioner. The petitioner has also failed to lead any evidence so as to rebut his presence at the time of alleged incident. Therefore, there is no infirmity in the order of the trial Court so also order of the Additional Sessions Court. The petitioner has not made out a case so as to interfere

with the sentence. However, having regard to the alleged incident relates back to the year of 1994 and petitioner is not involved in any other case as is evident from custody certificate dated 15.03.2016, he shall be released on probation. The sentence of 2 years is reduced to the period he has already undergone. Insofar as payment of fine is concerned, it is enhanced from Rs.3000/- to Rs.10,000/- under Section 392 IPC. The fine amount shall be deposited within a period of 3 months from today failing which the Chief Judicial Magistrate, Jagadhri is directed to take coercive steps to recover the fine amount.

11. Appeal stands disposed of.

**March 29th, 2016**

pooja saini

**( P.B.BAJANTHRI )**  
**JUDGE**