

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7857-2012 (O&M)

Date of decision: August 09, 2016.

Dhananjay Singh

... **Petitioner**

v.

State of Punjab and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Chetan Mittal, Senior Advocate with
Shri Puneet Gupta, Advocate for the petitioner.

Shri Shailesh Gupta, Additional Advocate General, Punjab.

Shri Sandeep Khunger, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

Heard learned Counsel for the rival parties.

This is a petition for quashing of FIR No.24 dated 26.02.2012 registered under Sections 379/406 IPC, Police Station City Fazilka and the consequential proceedings arising therefrom. I quote the crux of the FIR, which reads thus:-

“Statement of Raj Kumar s/o Sh. Bali Ram, Caste Sharma, resident of Cantt. Road, New Chankia Model School, Fazilka aged approximately 35 years, stated that I am resident of the above mentioned address and used to do household work at the house of Basant Kumar Garg s/o Gian Chand Garg. That on 2-2-2012 time around 11:30 AM after getting 4 sweaters dry cleaned and 5 trousers altered of Basant Kumar Garg, I was coming from the bazaar, on way while for doing purchase from

Easy Day Store situated at Gaushala Road, Fazilka. While entering the shop for purchase that then Dhananjay Singh, Manager, Easy Day Store and guard Pankaj stopped me and told me to hand over the outside staff to him and to deposit the same. After depositing clothes etc. and bag, I got Token No.6 and went inside the shop for purchasing goods. When I returned back I tried to get my clothe after giving the token, on this the storekeeper and Manager started looking here and there started dilly-delaying for giving back the clothes. When they did not return my clothes, I made a hue and cry then on this. The Manager Dhananjay Singh and Storekeeper assured me that they will return the clothes in the vening after searching them. The same have not been returned till date. The theft of these clothes is valued at Rs.25,000/- and is done with the active connivance and involvement of Dhananjay, Manager of Easy Day and Storekeeper Pankaj Kumar s/o Sh. Naresh Kumar, resident of Fazilka. Obligated and appropriate action may kindly be initiated. Raj Kumar signed in Hindi.”

Petitioner Dhananjay Singh admittedly is the Manager of the Store. Section 378 IPC, which defines 'theft', reads thus:-

“378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which affects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from

any other thing, as well as by actually moving it. Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal. Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations

(a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent. A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, in as much as what he did was not done dishonestly.

(j) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession, with the intention of depriving Z of the property as a security for his debt, he commits theft, in as much as he takes it dishonestly.

(k) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property in as much as he takes it dishonestly.

(l) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly; A has therefore committed theft.

(m) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent for the purpose merely

of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n) A asks charity from Z's wife. She gives A money, food and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(o) A is the paramour of Z's wife. She gives a valuable property, which A knows to belong to her husband Z, and to be such property as she has no authority from Z to give. If A takes the property dishonestly, he commits theft.

(p) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft."

Upon perusal of the FIR, it is clear that no offence under Section 379 IPC, which provides for punishment for theft, or Section 406 IPC is at all made out as none of the ingredients of the aforesaid Sections are attracted. Looking to the allegations in the FIR, it is clear that the complainant does not say that the petitioner actively participated in the commission of theft or breached the alleged trust. What is seen is that the informant has merely drawn inference that the present petitioner must have committed breach of trust and theft. It is then seen that the petitioner had supplied the CCTV footage to the Department of Police but then there is no investigation to show that it was the petitioner who had committed theft or breach of trust. In that view of the matter, irresistible conclusion would be that the FIR against the petitioner ought to be quashed.

Learned counsel for the complainant has drawn my attention to

the order dated June 01, 2016 and submitted that the petitioner had agreed to pay Rs.25,000/- to the Deputy Commissioner. In my opinion, if at all the Deputy Commissioner Basant Kumar Garg had any objection, he should be given liberty to take up the cause of action under civil law rather than trying to pressurize the petitioner to cough up Rs.25,000/-.

In that view of the matter, FIR No.24 dated 26.02.2012 registered under Sections 379/406 IPC, Police Station City Fazilka, along with all consequential proceedings, is quashed. Liberty is reserved in favour of Deputy Commissioner Basant Kumar Garg either to recover the value of goods from his peon or the petitioner or the shopkeeper by way of civil remedy.

The petition stands allowed accordingly.

[**A.B. Chaudhari**]
Judge

August 09, 2016.
kadyan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No