

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

CRM-A-1786-MA-2017 (O&M)

Date of decision:09.11.2017.

Shambhu Thakur

...Appellant

Versus

Barjesh Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. G.S.Verma, Advocate
for the appellant.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-25239-2017

This is an application for condonation of delay of 44 days in filing the present appeal.

For the reasons mentioned in the application, the delay of 44 days in filing the appeal is condoned.

Application stands disposed of.

CRM-A-1786-MA-2017 (O&M)

Prayer in this appeal is for setting aside the judgment dated 03.04.2017, passed by the learned Judicial Magistrate 1st Class, Ludhiana vide which, the respondent-accused was acquitted in criminal complaint No. 15A, dated 22.03.2013, under Sections 378, 379, 380, 381 IPC, registered at Police Station Jamalpur, Ludhiana.

Brief facts of the case are that the appellant/complainant filed a complaint before the trial Court with the allegation that he was carrying on the business of selling cycle parts and the accused was employed as a servant for the last about 2 ½ years ago, prior to filing of the complaint. The accused No.1 started stealing cycle spare parts and on 01.03.2013, he had

stolen Rs.10,000/- along with other valuable steel parts.

The complainant led his preliminary evidence and on the appreciation of the evidence, the respondent-accused were summoned to face trial under Sections 379, 380, 448, 451, 453, 454 of Indian Penal Code. Thereafter, the complainant led his pre-charge evidence and the complainant examined himself as CW-1 and deposed on the lines of the allegations which were made in the complaint.

CW-2-Raju was examined, who has stated that the complainant is running the business of cycle parts and respondent-accused-Barjesh Kumar was an employee of the complainant for about last four years. The accused is his neighbourer and on 01.03.2013, at about 2.30 P.M. when the complainant has gone out of the shop, the accused No.1 taking advantage of the absence of the complainant, stole the money and cycle parts and he handed over the same to accused No.2, who is father of accused No.1 as he was running a cycle repair shop opposite the shop of the complainant.

CW-3 Bablu stated that Barjesh Kumar, accused No.1 was an employee of the complainant and 2 - 3 times, he had committed theft of money from the shop of the complainant-Shambu Thakur in the presence of his father as well as in the presence of witness CW-3 Bablu.

Thereafter, the complainant closed his pre-charge evidence. The trial Court framed charges against the respondent-accused under the aforesaid sections and thereafter in the after-charge evidence, the above noted three witnesses were examined.

Thereafter, the statement of the accused persons was recorded under Section 313 Cr.P.C. and they denied all the incriminating evidence against them and they pleaded innocence and false implication in this case.

The trial Court, vide its judgment dated 03.04.2017, discharged the respondent-accused by passing the following order:-

“14. After hearing the rival the contentions put forth by learned Counsel for parties and on perusal of the record with their valuable guidance, this court proceeds to dispose of the matter.

15. For the culpability of the accused on the allegations made by the complainant, the complainant himself stepped into witness box as CW-1 and in his examination in chief he deposed the contents of the complaint and he also relied upon the documents i.e bills as well as application given to the police Mundian Kalan Chowki, Ludhiana which is Mark B to Mark I and Mark A respectively. But these documents have not been proved by the complainant as per the requirement of the law. So they are not to be considered as part of the evidence of the complainant and in his pre charge evidence, the complainant has not come present for his cross-examination and he voluntarily closed his evidence and in his after charge evidence he was completely shattered and stated that he came to know about the commission of alleged theft committed by the accused on 01.03.2013 from Raju, so he has no direct information and he got the information derived from other person and as per the complainant, the theft was committed by breaking open of almirah but in evidence it is relied that the theft was committed by breaking open the locks of the locker of cash box of the complainant. And the second witness i.e Raju who showed to be eye witness to Shambhu Thakur Vs Barjesh Kumar 13 the occurrence has deposed that earlier he was working with the complainant and at present he is working at Phase-5, Focal Point, Ludhiana and his duty hours starts from 9.30 to 5.00PM. His factory is away from the place of occurrence. As per the evidence on record and allegations, the alleged time of occurrence is between 1.00 to 1.30PM. So the presence of witness Raju is doubtful and he is

totally created witness, so not reliable one. Further it becomes more clear from his deposition that during his cross-examination he deposed that he did not see the accused stealing anything from the shop of the complainant but he saw the accused taking black polythene but he fails to disclose the contents of the polythene. Then the complainant examined third witness namely Bablu Kumar who disclosed that he earlier known Barjesh Kumar was the employee of the complainant and many times the accused Barjesh Kumar found committing theft but he fails to disclose the date, time and place regarding the recovery or the commission of theft. So in the evidence, adduced by the complainant, it is nowhere proved that the accused during and after the commission of services under the complainant has ever committed theft as nothing has been recovered from the accused.

16. *Regarding the charge of section 406, nothing has been proved on record that anything was entrusted by the complainant to the accused as accused had already left the job of the complainant, at the time of the alleged time of occurrence and no evidence has been proved on record regarding the commission of any offence under section 506 of IPC as nothing has been proved on record that accused ever criminally intimidated the complainant.*

17. *Hence, in the light of the discussion above the complainant has failed to prove its case. Therefore, the accused are acquitted of the charges framed against them on the basis of the benefit of doubt. It is further made it clear that accused no.2 was not even summoned on the basis of preliminary evidence and this fact was not pressed by the counsel for both the parties. File be consigned to the Record-Room after due compilation.”*

It is submitted on behalf of the appellant that it has come in the statement of the appellant, who appeared as CW-1, that respondent No.1 committed theft in the shop and handed over the cycle parts to his father

accused No.2 who was doing cycle repair work opposite the shop of the complainant. It is further submitted that the statement of CW-1, is supported by CW-2 and CW-3, who have stated that in their presence, accused No.1 had committed the theft and thus, the trial Court has wrongly acquitted the respondents-accused.

After hearing learned counsel for the appellant, I do not find any merit in the present case. Firstly, it is the case of the complainant that the theft was committed on 01.03.2013 and the present complaint was filed on 22.03.2013 i.e. after delay of 21 days. No document has been produced on record to show that prior to filing of the complaint, the applicant-complainant has approached the police authorities for lodging an FIR in this regard. Secondly, it has come in the statement of CW-3 Bablu that on an earlier occasion, he had seen accused No.1 Barjesh Kumar committing theft in the shop but he never brought this fact in the notice of the complainant and therefore, the statement of CW-3 cannot be believed for this purpose. It has also come in the statement of both the witnesses i.e. CW-2 and CW-3 that they have failed to give any date, time or month when accused No.1 had committed theft on earlier occasions. The trial Court has rightly disbelieved the statement of CW-2 Raju because he was not an employee of the complainant and he is working in factory of Moon Light Auto Pvt. Ltd. at Phase-5, Ludhiana, which is far away from the shop of the complainant and therefore, his presence on 01.03.2013 in the shop of the complainant is not proved as he has failed to produce any document from his employer that on 01.03.2013 he was not present in his place of working. The respondent-accused have faced the agony of trial for about 4 years and the complainant, except from his bald statement, which has been discussed above, has failed

to prove that the respondents-accused have committed theft in the shop of the complainant/appellant, especially in view of the fact no police complaint was made and no recovery of stolen article was made from accused No.1. Similarly in absence of any recovery it is also not proved that accused No.1 handed over money or steel parts to accused No.2.

For the reasons stated above, I find no merit in the present appeal and the same is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

09.11.2017

Hemlata

Whether speaking/reasoned	Yes / No
Whether reportable	Yes / No