

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

**CRR No.3355 of 2015 (O&M)
Date of Decision: March 02, 2017**

Pawan Kumar

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Achin Gupta, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Pawan Kumar against State of Punjab and other respondents, challenging the impugned judgment dated 20.07.2015 passed by learned Addl. Sessions Judge, Bathinda, vide which the appeal filed by the accused-respondents was accepted and the judgment of conviction and order of sentence dated 24.09.2013 passed by learned Chief Judicial Magistrate, Bathinda was set aside.

From the record, I find that the challan was presented against the accused-respondents in case FIR No.508 dated 07.10.2016. The brief facts of the case as noted down in the judgment passed by learned CJM, Bathinda, are as under:-

“2. The prosecution story in brief is that on 7.10.2006, ASI Gurdeep Singh alongwith other police officials was present in Arya Samaj Chowk, Bathinda, where complainant Pawan Kumar son of Amar Singh, resident of Gali No.2, Paras Ram Nagar, Bathinda, got recorded his statement to the effect that he is running the shop of readymade garments, under htename and style of Yadav Garments, in Dhillon Market, Mehna Chowk, in front of Garg Boot House. This shop was taken on

rent from one Nar Singh son of Jang Singh, at the rate of Rs.7500/- per month, about two years back. The rent was being paid by him every month. Nar Singh died about one year back. After his death, his elder brother Surjit Singh, Paramjit Kaur wife of Nar Singh and Jasvir Kaur, mother of Nar Singh were getting rent. On 25.9.2006, he had gone out of station, for his domestic work. The shop was closed. On 5.10.2006, at about 9.00 a.m., when he come to his shop, to open it, he saw that his shop was already lying open and one Hindu Gentlemen was sitting, who had kept the Manyari articles there, who on seeing him became nervous and had gone after closing the shop. Then Jang Singh, his wife Jasvir Kaur and daughter-in-law Paramjit Kaur had started abusing him and forced him. Out of fear, he came to his house. He had told about this entire occurrence to his friend Yashpal son of Mood Chand, who asked him to talk with owner of shop. The talk was doing on. Master Surjit Singh, his father Jang Singh, mother Jasvir Kaur and Paramjit Kaur wife of Nar Singh had asked to him and his friend Yashpal that they had removed the articles lying in the shop, after breaking the locks, now they would not give the shop nor the articles. The above said persons had committed the theft of readymade garments worth Rs.4,50,000/-, bill and other documents.”

Learned JMIC, Bathinda, after appreciating the evidence, convicted the accused-respondents under Sections 448 and 380 IPC and sentenced them to undergo rigorous imprisonment for a maximum period of two years under Section 380 IPC along with fine. An appeal was filed by the accused-respondents against the judgment of conviction and order of sentence, and the same was accepted by learned Addl. Sessions Judge, Bathinda and they were acquitted of the charges framed against them.

Aggrieved from the judgment passed by the lower Appellate Court, present revision petition has been filed by the complainant-petitioner.

I have heard learned counsel for the petitioner and have gone through the record.

From the perusal of the record and evidence produced by the prosecution, I find that the complainant Pawan Kumar is not the eye witness

Yashpal and there is no mention of Jeet Kumar that he has seen the occurrence or he informed the complainant. I have gone through the statement of PW-5 Jeet Kumar, who is the only eye witness. He has stated in his statement that the theft took place at night time at 11.30 p.m. and he informed the complainant on the next day, when complainant came to his shop etc. but in the version given by complainant in the FIR, which is first version, he stated that he has gone out of station on 25.09.2006 and he came back on 05.10.2006 at about 9.00 a.m. and he saw that his shop was already lying open and one Hindu Gentleman was sitting, who had kept the Manyari articles there. So, the version given by the complainant in the FIR and the statement given by Jeet Kumar are totally contradictory.

As already discussed, there is no mention that Jeet Kumar has seen the theft committed by the accused or that he informed the complainant on 03.10.2016. The FIR in the present case has been registered on 09.10.2006 and delay has not been explained. Furthermore, no stolen articles were recovered during the investigation. Learned lower Appellate Court also held that there is no document on record to show that complainant was in possession of the shop in question and was running the shop. As per the rent note Ex.DW4/A, it is proved that on 01.08.2006, Paramjit Kaur owner of the said shop handed over the possession to one Sameer and said rent note has not been rebutted by the complainant. The Court held that there was no document on record to show that Pawan Kumar was in possession of the shop on the date of occurrence. No bills of stolen articles have been proved by the complainant. Statement of Jeet Kumar is also contradictory and unreliable.

version given by Jeet Kumar that he was going from railway station to his shop and he saw the occurrence, is not believable. As per Jeet Kumar's version, the door in the main street of the shop was closed and it was open on the backside of the street. Jeet Kumar also admitted in cross-examination that street on the backside is only meant for the market and not for the public. He also stated in the cross-examination that he was not knowing the names of other persons and he enquired the names of other persons from neighbouring shops. There is nothing as to when he enquired regarding names of the accused. As per Jeet Kumar, this occurrence took place at 11.30 p.m. at night time. So, the statement of Jeet Kumar cannot be believed.

The perusal of the judgment passed by learned lower Appellate Court shows that the findings have been given as per evidence and law and in no way, the findings can be held as perverse or illegal. Jeet Kumar, the only eye witness to the occurrence, is not a reliable witness and reasonable doubt exists in the prosecution version.

In view of the above discussion, I find that the impugned judgment dated 20.07.2015 passed by learned Addl. Sessions Judge, Bathinda, acquitting the accused of the charges framed against them, is correct, as per evidence and law and the same is upheld.

Therefore, finding no merit in the present petition, the same is dismissed.

March 02, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No