

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

Crl. Revision No.3351 of 2016 (O&M)

Date of Decision: 26.02.2018

Jaibhagwan and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. J.P. Sharma, Advocate,
for the petitioners.

Mr. Baljit Singh Virk, DAG, Haryana.

Amol Rattan Singh, J.

By this revision petition, the two petitioners challenge the judgment of the learned Judicial Magistrate Ist Class, Mohindergarh, dated 18.09.2015, convicting them for the commission of an offence punishable under Section 392 IPC (though acquitting them of the charge framed under Section 506 IPC), upon which they were sentenced to undergo 3 months rigorous imprisonment. That judgment and order having been upheld by the appellate Court (Sessions Judge, Narnaul), vide its judgment dated 03.09.2016, that judgment is also under challenge in this petition.

As a matter of fact, as can be seen from the judgment of the trial Court, the complainant, though in his testimony had reiterated what he had stated in the complaint (on the basis of which the FIR was registered), he also testified that he had compromised the matter with the petitioners and their co-accused Sudhir.

That Court, however, held that the compromise would make no

difference as it was a non-compoundable offence, which could not be compounded even with the permission of the Court.

It further went on to hold that as the complainant had obtained his stolen articles on *sapurdari* from the Court, obviously the articles were stolen in the manner given in the complaint, therefore proving the guilt of the petitioners.

It, naturally, needs notice here that as per the complaint filed by the complainant, Haripal, on 07.05.2013 after work, he was waiting at the Bus-stand, Kanina, for a vehicle to go home and at about 10.00 pm took a lift from a motorcycle coming from the side of Rewari. After a short distance, two more persons sought a lift and as per the complainant, they too got on to the motorcycle and they all proceeded towards Mohindergarh, prior to which, the complainant had told the other 'boys', upon a query made by them, that he (complainant) belonged to Jharkhand.

As noticed by the learned appellate Court, the complainant had also stated that the rider of the motorcycle had charged Rs.10/- as fare from all the three persons who he give a lift to, including the complainant.

When they reached near the Krishna Public School, the person riding (driving) the motorcycle stopped it to answer the call of nature, upon which one of the pillion riders grabed the complainants' neck, with all others throwing him on the ground and beating him.

They are also stated to have then taken the complainants' mobile and his purse/wallet from his pocket, with one of them also snatching his bag, telling him that he would be done to death in case he made any complaint.

Thus the FIR came to be registered, with the allegation that the

complainants' mobile, containing two sims in it, his purse/wallet carrying Rs.1520/- in it, two ATMs cards and one identity card and one bag of gray colour, consisting of some 'valuable' documents, a mobile charger and clothes, were taken away by the accused.

Before this Court, learned counsel for the petitioners submits that though two applications were filed before the learned trial court for release of the motorcycle stated to have been recovered, as was alleged to have been used in the crime by the petitioners, as also by the complainant for recovery of the articles stated to have been stolen by the petitioners at gun point, i.e. mobile phone, sim cards, lead (lid) and clothes etc., however, neither of the said articles were actually exhibited before the trial court. No one from the police party who was stated to have recovered the said articles, was examined as a prosecution witness.

He therefore submits no evidence whatsoever was led before the trial court with regard to recovery of any of the aforesaid articles.

Mr. Virk, learned State counsel, does not deny the aforesaid contention of the learned counsel for the petitioners, but submits that as a matter fact the complainant and the petitioners had reached a compromise with each other and therefore, no serious opposition was even made to the release of the articles.

Having considered the aforesaid contentions, as already noticed, it is seen that the complainant PW-2, Haripal admitted before the trial Court that though the occurrence took place, he had compromised the matter with the petitioners.

He also stated that he did not remember the number of the

motorcycle and further, that the petitioners (accused) had not given him any beatings. However, the trial Court on the basis of the fact that the complainant 'obtained' the stolen items on 'sapurdari', holding that the articles had obviously been stolen and recovered from the petitioner, and eventually therefore had to be released to him on 'sapurdari', held the petitioners to be guilty of commission of an offence punishable under Section 392 IPC, while acquitting them of the charge framed for the commission of an offence punishable under Section 506 IPC.

The learned appellate court (Sessions Judge, Narnaul), eventually came to the same conclusion, to the effect that the matter had been actually compromised between the petitioners and the complainant, but since the offence punishable under Section 392 IPC is not a compoundable one, there was no ground for interfere in the conviction of the petitioners.

Learned counsel for the petitioners has further argued that the petitioners are both well educated and have no history whatsoever of any criminal antecedents and as a matter of fact, they were named by the complainant under the pressure of the police. He reiterates that not even the investigating officer, or any other police official who was shown to have effected recoveries from the petitioners, testified in evidence.

He therefore submits that the possibility of in fact the articles never having been present in the police station cannot be ruled out, with the application for release of articles on 'sapurdari' filed only to protect the police personnel.

Having considered the aforesaid arguments, seeing the fact that as per the custody certificate filed by the learned State counsel in Court today,

there is no other criminal case shown to be registered against the petitioner at any stage and the fact that the articles shown to have been recovered from the petitioners, which are stated to have been released on 'sapurdari', were never exhibited before the trial Court, with no recovery memo also having been exhibited before that Court, and neither the investigating officer nor any of the members of the team which is stated to have recovered the articles, having been examined as prosecution witnesses, granting the petitioners benefit of doubt, the petition is allowed and the petitioners are acquitted of the charge framed against them for the commission of an offence punishable under Section 392 IPC, they already having been acquitted of the charge for the commission of an offence punishable under Section 506 IPC.

The bail and surety bonds of the petitioners shall be discharged as per procedure.

26.02.2018

vcgarg/dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No