

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

CRR No.1883 of 2018 (O&M).

Decided on:-July 24, 2018.

Surinder Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab.

HARI PAL VERMA, J.

The petitioner has filed present revision petition against the judgment dated 17.04.2018 passed by learned Additional Sessions Judge, Patiala, whereby his appeal against the judgment of conviction and order of sentence dated 18.11.2017 passed by learned Judicial Magistrate 1st Class, Patiala, was dismissed.

Vide judgment and order dated 18.11.2017, learned Magistrate, though acquitted the petitioner-accused of the charge levelled against him under Sections 457 and 380 IPC, but held him guilty for commission of offence under Section 411 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for a period of one month.

Briefly stated, FIR No.412 dated 18.12.2012 under Sections 457, 380 and 411 IPC was registered against the petitioner-accused at Police Station Tripuri, Patiala. As per the said FIR, on 18.12.2012, when ASI Darshan Singh, along with police party was present at Golgappa Chowk, Tripuri, Patiala in connection with patrolling duty, complainant Satpal Singh got recorded his statement to the effect that he is employed as UDC in the Punjab State Electricity Board. On 15.12.2012 at about 01.30 P.M., he (complainant) along with his wife Sarabjit Kaur after locking the house had gone to meet their daughter. CCTV cameras were installed all around his house. At about 08.25 P.M., when he returned back to his house, he found that the lights of his house were on and the left side lock of the bedroom as well as the net of the door was broken. The cupboard of the room was also opened and the articles were lying scattered. On checking the room, he found that Rs.15,000/- in cash, 150 Canadian Dollars and one gold set of 2½ Tolas were missing. The footage of CCTV camera was checked and it came to his notice that one young boy wearing white coloured tracksuit and white cap had stolen the said articles after entering into the house of complainant from back side. However, after hearing the noise of reaching the complainant, he fled away from the wall of bathroom.

The investigation was conducted, site plan of the place of occurrence was prepared and the statements of witnesses under Section 161 Cr.PC were recorded. During the course of investigation in FIR No.108 dated 30.04.2015 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and 454, 457 and 380 IPC registered at Police Station Tripuri, Patiala, petitioner-accused Surinder Singh admitted the fact that he

had committed theft in the house of the complainant and recovery from him was effected. Thereafter, the copy of statement under Section 27 of the Indian Evidence Act, 1872 made by the petitioner-accused in the abovesaid FIR No.108 was obtained and he was arrested in the present FIR. The identification of the gold ornaments was got done from the complainant and same were taken into police possession.

After completion of investigation, Challan was filed in the Court. The copy of Challan as envisaged under Section 207 Cr.PC was supplied to the petitioner-accused. On finding a prima facie case against the petitioner, he was charge-sheeted under Sections 457, 380 and 411 IPC, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment and order dated 18.11.2017 held the petitioner guilty under Section 411 IPC and sentenced him to undergo imprisonment, as mentioned hereinabove.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment and order of sentence before the Court of Session. However, vide judgment dated 17.04.2018 passed by learned Additional Sessions Judge, Patiala, appeal of the petitioner was dismissed.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner has argued that on the basis of evidence adduced by the prosecution, the trial Court has come to the conclusion that the prosecution has failed to substantiate the charge under Section 457 and 380 IPC, but still the petitioner has been convicted for the

offence under Section 411 IPC merely on the premise that the complainant has identified the ornaments which were recovered in FIR No.108 dated 30.04.2015 and secondly, the petitioner has confessed to have committed theft in the house of complainant Vijay Singh in the said FIR.

He has further contended that the FIR in question was registered under Sections 457 and 380 IPC on the basis of statement of complainant Satpal Singh against some unknown person. Thereafter, the matter was investigated by the police and statements of witnesses under Section 161 Cr.PC were recorded. During the course of investigation, the petitioner, who was lodged in custody in FIR No.108 dated 30.04.2015 under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and 454, 457 and 380 IPC registered at Police Station Tripuri, Patiala, admitted about the commission of offence of theft in the house of complainant Satpal Singh and the recovery from the petitioner was effected. The alleged recovery which has been shown in the case was effected in the year 2015, whereas the FIR in the present case was registered on 18.12.2012. Thus, the recovery was effected after a period of more than three years. In case the petitioner is convicted in the abovesaid FIR No.108 dated 30.04.2015, then it would lead to double jeopardy. Therefore, the petitioner-accused cannot be vexed twice for the recovery of stolen articles. The recovery of 150 Canadian Dollars and 2½ Tolas of gold jewellery has been shown in the present case, but the prosecution has failed to prove that these articles were ever owned by the complainant. Even otherwise, there is a delay in lodging the FIR. The theft was committed in the house of complainant on 15.12.2012, whereas the FIR was registered on 18.12.2012.

In support of his contentions, learned counsel for the petitioner has relied upon *Karnal Singh Uttam Singh Versus State of Maharashtra 1976 AIR (SC) 1097*; *Chanan Singh Versus State of Punjab 1981 CLJ (Criminal) 206* and *Rajinder Kumar Versus State 1983(1) RCR (Criminal) 67*.

On the other hand, it was pointed out by learned State counsel that the petitioner is in the habit of committing such like offences and as many as 34 cases are registered against him of somewhat similar nature. Custody certificate filed by learned State counsel in Court, is taken on record.

I have heard learned counsel for the parties.

The plea of the petitioner that the allegation against him is that he has committed theft, but as theft has not been proved, he cannot be held guilty under Section 411 IPC, cannot be accepted as it is pursuant to his statement made under Section 27 of the Indian Evidence Act, 1872, the recovery was effected on the basis of disclosure statement of the petitioner.

In order to prove the recovery of stolen property, the prosecution has examined DSP Rajesh Kumar as PW6, who deposed that on 30.04.2015, the petitioner-accused was arrested by him in case bearing FIR No.108 dated 30.04.2015 under Sections 21 and 22 of the NDPS Act and Sections 454, 457, 380 and 411 IPC registered at Police Station Tripuri, Patiala along with narcotic substances and stolen articles, cash Rs.3 lakh and one revolver 32 bore and live cartridges. During the course of investigation, the petitioner had confessed his guilt and, therefore, recovery was effected from him. This witness has proved on record the disclosure statement of petitioner-accused dated 01.05.2015 as Ex.PW5/C, recovery memo Ex.PW5/A, site plan

Ex.PW6/A, another disclosure statement of the petitioner dated 02.05.2015 as Ex.PW5/B, recovery memo Ex.PW5/A1 and site plan of recovery as Ex.PW6/B. Further, MHC Jeet Singh as PW2 has also deposed that on 22.05.2017 on the instruction of investigating officer of the present case, he produced the case property deposited in case FIR No.108 dated 30.04.2015 under Sections 21 and 22 of the NDPS Act and Sections 454, 457, 380 and 411 IPC registered at Police Station Tripuri, Patiala before the complainant for identification. The complainant had identified one gold set ladies and two gold Karas.

Interestingly, the petitioner has committed the offence despite being posted in the Police Department and his plea that DSP was inimical to him cannot be accepted as the offences were committed during different span of time. Once the prosecution has succeeded in proving on record the recovery of the stolen property from possession of the petitioner by leading cogent and convincing evidence, there is no illegality in the judgment of learned trial Court in holding the petitioner guilty for commission of offence under Section 411 IPC.

With the help of Section 114 of the Indian Evidence Act, 1872, the Court may presume existence of certain facts and in the case in hand, the Courts below have rightly presumed those certain facts. It is not the case of the petitioner that the stolen property was owned by him. He has also failed to give any explanation as to how the recovered articles came in his possession. Therefore, this Court finds that the Courts below have rightly drawn an inference that once the property is not owned by the petitioner and has been found in his possession for which an FIR was already lodged by the

complainant, ingredients of Section 411 IPC are duly made out. Reliance in this regard has rightly been made by learned trial Court in **2002(1) RCR (Criminal) 206** titled as ***Mukesh Kumar Versus State of Union Territory, Chandigarh***, wherein it has been held that recovery of 2 motorcycles was effected from accused and accused could not explain as to how these motorcycles had come in his possession and the only inference is that he had committed the theft of these motorcycles or had received the same as stolen property.

The judgments cited by learned counsel for the petitioner are not relevant in the peculiar facts and circumstances of the present case, as the certificate produced on record shows that the track record of the petitioner is that he is a habitual offender and involved in as many as 34 cases of almost similar nature registered against him at Police Station Tripuri, Patiala.

Moreover, it would be relevant to mention here that there are concurrent findings given by the Courts below against the petitioner. The scope of revisional jurisdiction is vested with limited powers and the same should be exercised only in case where the trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence. The petitioner has not been able to prove any illegality or perversity in the findings given by both the Courts below, which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, the impugned judgment of conviction and order of sentence dated 18.11.2017 passed by learned Judicial Magistrate 1st Class, Patiala as well as the judgment dated 17.04.2018 passed by learned

Additional Sessions Judge, Patiala, are upheld and the present revision petition, being devoid of any merit, is dismissed.

July 24, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No