

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-1535-2010

Date of Decision: 22.8.2019

Krishan Kumar @ Kala and others

.....Petitioners

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. R.N. Moudgil, Advocate, for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

**Harnaresh Singh Gill, J.**

Challenge in the present petition is to the judgment dated 18.5.2010 passed by the learned Sessions Judge, Rupnagar, whereby while dismissing the appeal filed by the petitioners, the judgment of conviction and order of sentence dated 4.2.2009 passed by the learned Sub Divisional Judicial Magistrate, Anandpur Sahib, has been upheld. The learned Sub Divisional Judicial Magistrate, Anandpur Sahib, had found the petitioners guilty under Section 411 IPC and sentenced them to undergo RI for 9 months and to pay a fine of Rs.500/- each and, in default of payment of fine, to further undergo simple imprisonment for one month.

It is the case of the prosecution that on 1.1.2000, the officials of the Forest Department spotted five trees of Khair Wood, illegally cut in Kalwan Jungle and, accordingly, at night they had installed a check post on the path. The villagers were

also joined, who informed that they had sent Gurdip Singh son of Bakhtawar Singh with the thieves. The allegation against the petitioners was that when they were stopped at the joint check post by the officials of the Forest Department and some residents of the village, they stated that they had brought down the stock and were now going to fetch the jeep of Ranjit Singh son of Som Singh, who was accompanying them, to transport the Khair Wood, for selling the same at village Khera.

After completion of investigation and necessary formalities, challan was presented against the petitioners.

Charges were framed against the accused-petitioners under Sections 379 and 411 IPC. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 6 witnesses.

In the statement recorded under Section 313 Cr.P.C, the accused denied the charges and pleaded false implication.

The learned trial Court, while acquitting the accused-petitioners of the offence under Section 379 IPC, convicted them under Section 411 IPC and as noticed above, sentenced them accordingly. The appeal filed by the accused-petitioners was also dismissed by the learned Sessions Judge, Rupnagar.

Still aggrieved, the petitioners have preferred the present revision petition.

Learned counsel for the petitioners submits that both the Courts below have misread and misinterpreted the evidence on record, inasmuch as the ingredients laid down in

Section 411 IPC were not proved on record. He further contends that in order to sustain the finding of guilt under Section 411 IPC, the stipulation of dishonestly receiving and retaining the stolen property is to be proved coupled with the fact that while receiving and retaining such property, the knowledge of such property being stolen property, is a condition precedent. However, in the instant case, all these aspects are lacking. Still further, it is argued that there are material contradictions in the statements of the prosecution witnesses. While referring to the statement of PW5-Gurchet Singh and that of PW2-Gurjit Singh, it is contended that as per former, the accused-petitioners had, on seeing the check post, run away from the spot, whereas according to the latter, the accused-petitioners were caught by the persons at the check post and thereafter, apprehended by the police. However, the factual position in the instant case indicates that the FIR had been registered on 3.1.2000, whereas the accused-petitioners had been arrested on 24.2.2000, 6.1.2000 and 11.1.2000. Thus, when the official witnesses (forest department's officials) are contradicting each other regarding the very basis of the criminal prosecution launched against the petitioners-accused, it stands clearly established that the prosecution case is based on complete concoction and is a result of deliberations and consultations.

On the other hand, learned State counsel, while supporting the judgments and order passed by the Courts below, states that it could not be proved on record by the accused-petitioners that there was any ill-motive on the part of

the prosecution to falsely implicate the accused-petitioners. Rather, on the basis of the oral and documentary evidence on record, it stood proved on record that the petitioners were guilty of the offence under Section 411 IPC. Hence, the learned State counsel prays for dismissal of the revision petition.

I have heard learned counsel for the parties and with their assistance, have gone through the record of the case.

In order to prove its case, the prosecution had examined Baldev Singh, Forest Range Officer as PW1, Gurjit Singh, Forest Guard as PW2, Pal Singh, Deputy Range Officer as PW3, ASI Jagan Nath, Traffic Incharge, Ropar, as PW4 and Gurchet Singh, Forest Guard as PW5. As per the statements of the said witnesses, the petitioners along with one Nirmal Singh and Gurdip Singh came towards the check post. The petitioners were handed over to Sarpanch Karam Singh. Nirmal Singh, who was from Ambala, was handed over to the police party.

As per PW5-Gurchet Singh, Forest Guard, on 31.12.1999 at 9.00 p.m., on seeing the check post, the petitioners ran away from the spot and the wood was thrown away at some distance by the petitioners and the Guard had brought a tractor from some person (he did not remember the name of the tractor owner) and wood was transported to the house of Sarpanch Karam Singh and the same was taken into possession by the police after 4 days.

At the same time, PW2-Gurjit Singh, Forest Guard stated that check post had been installed at night on 31.12.1999 and 1.1.2000 and that four persons, namely, Ranjit Singh son of

Som Singh, Ranjit Singh @ Toni, Krishan Kumar and Gurdip Singh, had been seen coming from the jungle side. They stated that wood had been collected and to transport the same, they were going to fetch a vehicle. They disclosed their names at the Naka i.e. the check post. They were caught and later on apprehended by the police. No tool (implement) used for cutting the tree was found from the petitioners and when they saw the persons at the check post, they ran away from the spot.

Thus, the contradictions in the statements of the official witnesses, points out that in fact, the petitioners were not caught with the wood nor any tool used for cutting the trees, was recovered from them. The alleged recovery was made at night on 31.12.1999/1.1.2000 whereas the FIR was registered on 3.1.2000. No independent witness, had been produced by the prosecution. Santokh Singh, alleged eye-witness, had not been produced. He was the most necessary witness. Bakhtawar Singh had not been produced being won over. All the witnesses produced by the prosecution were the official witnesses and, they too narrated different stories.

Gurdip Singh was alleged to be sent as a Spy to check the theft and was questioned at the check post along with the petitioners. Said Gurdip Singh was not produced as a witness by the prosecution for the reasons best know to them. Gurdip Singh was summoned under Section 319 Cr.P.C. vide order dated 12.09.2002 by the trial Court. The summoning order was set aside by the High Court on 18.10.2006 on the ground

that Gurdip Singh had just accompanied the petitioners so that they could be caught.

In the present case, petitioner No.1- Krishan Kumar was arrested on 24.02.2000, petitioner No.2-Ranjit Singh @ Toni was produced by Sohan Singh, Panch and was, thus, arrested on 6.1.2000 and petitioner No.3 Ranjit Singh son of Som Singh was produced by Joga Singh, Panch and was, thus, arrested on 11.01.2000.

The petitioners were convicted under Section 411 IPC. As per Section 411 IPC, whoever, dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

In the present case, neither the petitioners had received the stolen property nor had they retained the same. Rather, the petitioners were stopped at the check post empty handed. The alleged wood was not with them. If the stolen wood was stacked in the house of Karam Singh, Sarpanch, he ought to have been examined to ascertain the true factual position. However, he had not been produced as a prosecution witness.

In order to bring home the guilty under Section 411 IPC, both the ingredients i.e. receiving and retaining the stolen property, must co-exist, namely, the accused must receive or retain the stolen property and secondly, he must have the knowledge or reasons to believe that the property is stolen property, within the meaning of Section 410 IPC. The expression

`receives or retains' postulates an actual and constructive possession. Such stipulations are clearly lacking in the present case and, thus, the finding of guilt recorded by the Courts below is not tenable.

Even Gurdip Singh, who was sent as a Spy to check the petitioners causing theft and to inform regarding the same, had not been produced. Rather, he was summoned under Section 319 Cr.P.C. and the summoning order, as noticed above, was set aside by the High Court.

The Courts below have misread the evidence that the recovery was made at the instance of the petitioners. Ex. PD, though shows the recovery, yet the same had not been signed by the petitioners nor there was any date visible to the naked eyes. Thus, such document could not have been relied by the Courts below.

In view of the above, the impugned judgments and order passed by the Courts below are not sustainable. Hence, the same are set aside. The petitioners are, accordingly, acquitted of the charges framed against them.

Allowed in the above terms.

**(HARNARESH SINGH GILL)**  
**JUDGE**

22.8.2019  
ds

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No