

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.01.2021

+ **CRL.A. 271/2017**

MOHD. MUSA

.....Appellant

Versus

STATE

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr Roshan Lal Saini, Advocate.
For the Respondent : Mr Ravi Nayak, APP for State.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 21.01.2017, whereby the Ld. ASJ, Karkardooma Courts has convicted the appellant for committing an offence punishable under Section 413 of the Indian Penal Code, 1860 (hereinafter 'IPC'). By an order dated 28.01.2017, which is also impugned in this appeal, the appellant was sentenced to undergo rigorous imprisonment for period of seven years along with a fine of ₹40,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year.

2. Briefly stated, the facts of the case are that on 05.04.2006, one Riyaz Mohammed (the complainant) lodged an E-FIR no. 10208/16, under Section 379 of the IPC regarding theft of his motorcycle (bearing no. DL-8SA-Z-7225). On 14.04.2016, Special Staff, North East apprehended the appellant with stolen vehicles and lodged DD no. 70B regarding the recovery of chassis bearing no. 18145 (which pertained to the aforesaid motorcycle) from the premises of the appellant. Thereafter, the appellant was arrested and sent to judicial custody. He was arrested in the present case from the concerned court, where he was produced on a production warrant, on the allegation that he had been habitually dealing in stolen property and there were a number of cases lodged against him. Further, at his instance, a number of parts of stolen vehicles were also recovered from his premises including the chassis and number plate of the aforesaid motorcycle.

3. Pursuant to the aforesaid FIR, the accused was charged with commission of the offences punishable under Sections 379/411/413 of the IPC. He pleaded not guilty and the matter was set down for trial. During the course of the trial, the prosecution examined eight witnesses.

4. It is the prosecution's case that the appellant was apprehended on 12.04.2016 at about 5:00 pm, by police officials, who were deployed at 66 Foota Road, new MCD Court, C Block, Yamuna Vihar, as he was found riding a stolen motorcycle (Bajaj Avenger). He did not have the Registration Certificate for the said vehicle and on verification from the control room, it was confirmed that the said

motorcycle was stolen. According to the prosecution, the appellant made a disclosure and at his instance, chassis and parts of several two-wheelers were recovered from his premises. This included the chassis of the stolen vehicle as reported in E-FIR no. 10208/16.

5. SI Shahid Ali was examined as PW-4. He correctly identified the appellant in open court. He stated that on 12.04.2016, at about 5:00 pm, he along with ASI Rakesh, HC Sunil, HC Vinay, HC Pramod, Ct. Bhullan Tyagi, Ct. Braham Pal, were checking vehicles at 66, Foota Road, near MCD Court, C Block, Yamuna Vihar. At about 5:30 pm, the appellant, driving an Avenger Bajaj bearing registration No. DL 6S AR 2221, was stopped and checked at the vehicle checking spot by them. He stated that he could not produce any document pertaining to his motorcycle or his Driving License. Thereafter, he checked the chassis number and engine number and the same were not found to be correct. He stated that the appellant had disclosed that about a week prior to that date, he had stolen the aforesaid motorcycle from the area of Panchsheel Garden, Naveen Shahdara. He stated that he verified the same from the control room by using Zipnet and found that the same was reported stolen and an E-FIR in that regard was lodged. Thereafter, the aforesaid motorcycle was seized under Section 102 of the Cr.PC. On being interrogated, the appellant disclosed his involvement in several cases along with his associate Sabir @ Kabootar. The appellant disclosed that Sabir used to sell stolen motorcycles to him. Further, he disclosed that some stolen two-wheelers and parts of two wheelers could be recovered from his house,

that is, H. No. 1009, Gali No. 33, Jafrabad, Delhi. The disclosure statement of the accused was recorded (Ex-PW4/A). Thereafter, at about 7 pm, he along with other police officials reached the house of the accused and the accused pointed out the hall of his house, where about ten-twelve number of motorcycles and scooties were kept. In addition, motorcycle parts, twenty registration plates of two wheelers, two engines of scooties, eight chassis of motorcycles, two chassis of scooties, some sheets, chains, mudguards etc. were also kept there. The aforesaid items were seized and seizure memos were prepared (Ex PW4/B-1, PW4/B-2, PW4/B-3, PW4/B-4, PW4/B-5). He stated that one registration plate bearing no. DL 8SZ 7225 and the chassis of motorcycle, which was reported stolen in present case, was also recovered at the instance of the accused, from his *godown*. The same were brought to PS Bhajan Pura and deposited with MHCM. He stated that he prepared *kalandara* (Ex PW4/C) against the accused, recorded DD No. 12A (Ex PW4/D) and statements of police officials in whose presence the recovery was effected; and prepared site plans of place of recovery (Ex PW4/E) and the place where accused was arrested (Ex PW4/F). Thereafter, the accused was detained in the lock up of the police station. He stated that on next day, the appellant was produced before the concerned court; he presented the *kalandara* and the accused was sent to judicial custody. He correctly identified the number plate and chassis of the vehicle in question in court.

6. In his cross examination, PW-4 stated that he had not informed the SHO, PS Bhajan Pura to use the barricades for vehicle checking,

as the same was not necessary and no written directions were given to him to check the vehicles at the material spot. He affirmed that he did not remember the number of vehicles checked by the police officials on the material date. He reiterated that the accused was stopped as he was not wearing a helmet and on being asked, he could not produce his Driving License. Further, he affirmed that he had not charged the accused under M.V. Act. He stated that he had asked four-five passers-by to join the proceedings, however, none agreed to do so. He stated that no notice was served upon them on their refusal to join the proceedings. He stated that he had visited the house of Sabir but he was not present there and no notice was served upon the family of Sabir. He stated that he made efforts to trace Sabir, however, his presence could not be procured. He stated that the house of the accused falls under the jurisdiction of PS Jafrabad, however, he did not take any assistance from them. He also did not make any departure and arrival entry at PS Jafrabad for going to the house of the accused for recovery. He stated that they had stayed at the place of recovery for about two hours. He stated that a police official of PS Jafrabad had joined them at the spot of recovery, however, he does not remember his name. He stated that he had not given any notice to the aforesaid police official from PS Jafrabad to join the recovery proceedings. He stated that the place of recovery was located in a thickly populated area. He affirmed that several persons had gathered at the time of recovery, however, nobody from the neighbourhood was called to join the proceedings. He stated that he had arranged one truck to take the recovered stolen articles from the house of the accused to PS Bhajan

Pura. He stated that he neither examined any of the neighbours with regards to ownership of the place of recovery nor did he take on record any documentary proof pertaining to the ownership of that place. He stated that he had not conducted TIP of the chassis of the two wheelers pertaining to the case in question. He denied the suggestion that the appellant was lifted from his house on 11.04.2016, at about 3 pm, while he was on his scooty no. DL 2SN 1571 and was falsely booked in several criminal cases under different police stations to work out the pending cases.

7. HC Vinay Kumar deposed as PW-6. He corroborated the testimony of SI Shahid Ali (PW-4) and ASI Rakesh Kumar (PW-5) regarding the apprehension of the accused as well as the recoveries made at his instance vide seizure memos Ex.PW4/E1 to Ex. PW4/E5. He also testified that the appellant was arrested in *kalandara* proceedings, on the alleged recovery of stolen articles.

8. SI Dhanattar Singh was examined as PW-1. He stated that on 12.04.2016, he was on duty as a Duty Officer at PS Bhajan Pura and at about 10:10 pm, SI Shahid Ali (PW-4) recorded DD No. 12A (Ex PW1/A), in his presence, about his arrival and recovery of items from the possession of the accused. He identified writing of PW-4 from a copy of the aforesaid DD. He also proved the E-FIR (Ex PW1/B) lodged by the complainant with PS Bhajan Pura. In his cross examination, he affirmed that the recovery items were not seen by him.

9. Ct. Prem Chand was examined as PW-2. He stated that on 14.04.2016, he was on duty as a Duty Constable at PS Bhajan Pura and at about 7:30 pm, he had received information from SI Shahid (PW-4), telephonically, about the recovery of chassis, number plate of the vehicle etc. from the possession of the appellant pertaining to three cases of their police station. He stated that he had recorded DD No. 70B (Ex.PW2/A), on the basis of information given by PW-4 and the same was assigned by him to MHC(R) for further action. In his cross examination, he denied the suggestion that the aforesaid DD is antedated and ante-timed. He also stated that he had no personal knowledge about the recovery of two wheelers, at the instance or from the possession of the accused. He denied the suggestion that the aforesaid DD was fabricated by him in connivance with PW-4 to work out the pending criminal cases of different police stations.

10. Riyaz Mohmad, the complainant, was examined as PW-3. He stated that he is the registered owner of the motorcycle black cherry Passion Crow motorcycle bearing registration No. DL 8SAZ 7225. He stated that he had purchased the aforesaid motorcycle second hand from a dealer and the said motorcycle was transferred in his name about two months back. He stated that on 03.04.2016, at about 9 pm, he had parked the aforesaid motorcycle near one marriage home in the area of Noor-e-Illahi and at about 10:00 pm, he found his motorcycle missing from the said area. Thereafter, he had called on Number 100 to report theft of his motorcycle. He stated that the PCR officials came and directed him to contact PS Bhajan Pura. After 1-2 days, he again

visited PS Bhajan Pura, as he was not carrying the Registration Certificate (RC) of his motorcycle earlier. Thereafter, on 05.04.2016, he lodged an E-FIR. He stated that during the course of investigation, the police had visited the place of theft at his instance and he handed over the RC (Ex PW3/A) and copy of his driving license (DL) (Ex PW3/B) to the police. He stated that in the month of April 2016, the police officials had told him about the recovery of the chassis of his motorcycle and he identified the same with the help of a serial number. He also identified the chassis of his motorcycle lying in the custody of MHC(M) in the court complex.

11. In his cross examination, he stated that neither recovery of the chassis of his motorcycle was done in his presence nor he is aware about the date of such recovery. He further stated that he is not aware from whose possession the chassis was recovered. He stated that one police official of PS Bhajan Pura had told him that the chassis of his motorcycle had been recovered. He identified the said chassis through its serial number with the help of copy of RC. He stated that he did not have the original RC of the motorcycle, as the same was lying in the storage compartment (*dickey*) when it was stolen. He denied the suggestion that the motorcycle did not belong to him or the same had been planted by the police to work out their pending cases.

12. ASI Rakesh Kumar deposed as PW-5. He stated that on 12.04.2016, he was posted in Special Staff North East District. He stated on that day at about 5 pm, SI Shahid, HC Vinay Kumar and Ct. Bhullan Tyagi and him were busy in vehicle checking at 66, Feeta

Road, near MCD Office, Yamuna Vihar. Thereafter, at about 5:30 pm, the accused (driving an Avenger Bajaj bearing registration No. DL 6S AR 2221) was stopped and checked at the vehicle checking spot. He stated that the accused could not produce documents of his motorcycle or his DL to SI Shahid Khan (PW-4). He stated that during interrogation, the motorcycle was found to be stolen and PW-4 had made an inquiry through Zipnet. Thereafter, the aforesaid motorcycle was seized by PW-4 under Section 102 of the Cr.PC. Upon further interrogation, it was disclosed by the accused that some stolen two wheelers and parts of two wheelers can be recovered from his house at Jafrabad, Delhi. The disclosure statement of the accused was recorded by PW-4 (Ex-PW4/A). Thereafter, they reached the house of the accused and the accused led them to the hall of his house, where about 7-8 motorcycles and scooties along with parts of two wheelers were found. The aforesaid items were seized and seizure memos were prepared (Ex PW4/B-1, PW4/B-2, PW4/B-3, PW4/B-4, PW4/B-5). The accused had further stated that one Sabir used to sell stolen motorcycles to him. He stated that one registration plate bearing no. DL 8SZ 7225 and the chassis of motorcycle bearing no. 18145 was also recovered from the possession of the accused. He stated that all the recovered items were brought by a TATA vehicle, which was arranged by PW-4, at PS Bhajan Pura, where necessary formalities were completed. He stated that PW-4 prepared a *kalandara* against the accused (Ex PW4/C) and recorded DD no 12A (Ex PW4/D). Thereafter, site plan of the place of checking the vehicle and place of recovery were prepared. He stated that the case property was

deposited with MHCM and the concerned police stations were informed about the recoveries pertaining to their cases.

13. In his cross examination, he stated that he did not remember the number of vehicles checked by them at the vehicle checking spot till 5:30 pm. He affirmed that they had not maintained any record pertaining to checking of vehicles. He stated that no other person was present when they had stopped the accused at the vehicle checking spot. He affirmed that PW-4 had not taken any action against the accused under M.V. Act for not wearing a helmet and for non-production of DL. He denied the suggestion that the aforesaid proceedings under M.V. Act were not carried out, as the accused was not apprehended from the place and manner stated by him. He affirmed that neither any police official from PS Jafrabad was taken by PW-4 for recovery nor any arrival or departure entry was made at PS Jafrabad. He further stated that neither any neighbour was called to join recovery proceedings at the spot by PW-4 nor any witnesses from the locality were examined to verify the ownership of the place of recovery. He further stated that no documentary evidence was taken on record about the ownership of the house. He stated that the IO had arranged one private vehicle DCM to take the articles to the police station from the place of recovery, however, he did not remember the registration number of the aforesaid vehicle or the name of the driver. He denied the suggestion that the accused was lifted from his house along with scooty No. DL 2SN 1571 or the accused was falsely booked in this case to work out the pending cases. He denied the

suggestion that the accused had informed them that on 11.04.2016, he had purchased the aforesaid scooty from the registered owner or he had the sale letter in his possession but the registered owner could not transfer the title of the aforesaid scooty in his name. He affirmed that no inquiries were made by PW-4 from witnesses from when and whom the said scooty was purchased, as no one had met them to tell them that the two wheelers had been sold to the accused. He denied the suggestion that no writing work was done by PW-4 at the house of the accused as no recovery was effected from there. He denied the suggestion that PW-4 had forcibly taken signatures of the accused on the documents of *kalandara* proceedings, after lifting the accused from his house with his scooty, on 11.04.2016. He denied the suggestion that the accused was falsely booked in *kalandara* proceedings to work out pending cases of other police stations.

14. HC Sompal Singh, the IO, deposed as PW-8. He stated that on 05.04.2016, he had met the complainant Mohd Riyaz at the police station, as he had been assigned to take action pertaining to the FIR in question regarding theft of motorcycle (Hero Honda Passion Pro Grey Colour bearing no DL 8SAZ 7225). Thereafter, he visited the place of theft at the complainant's instance i.e., place in front of H.No.C-150, Gali No. 11, C Block, North Ghonda and prepared an unscaled site plan (Ex PW8/A). He stated that he had also collected certificate for E-FIR (Ex PW8/1) and placed the same on file, which does not bear signatures of SHOP, E Police Station. He stated that the same had been taken out of the net and thereafter, he passed on information

through net to E SHO for the present case. He stated that he searched for the aforesaid motorcycle, however, no clue came forward till 11.04.2016. He stated that on 14.04.2016, copy of DD No. 70B (Ex PW2/A) regarding the chassis and number plate of the stolen motorcycles recovered from the accused, was delivered to him by MHC(R). He stated that through the aforesaid DD, it came to his notice that chassis and number plate of stolen motorcycle of present case were recovered from the accused. He stated that he placed the aforesaid DD on file and thereafter, visited Special Staff, North East District and collected copy of *kalandara* (Ex. PW4/C), copy of DD No. 12A (Ex PW4/D), disclosure statement of the accused (Ex PW4/A), site plans (Ex PW4/F and PW4/E), five seizure memos (Ex PW4/B-1 to PW4/B-5) and placed the same on file. He stated that he had also interrogated Special Staff officials namely SI Shahid, Ct Bhullan, HC Vinay, ASI Rakesh under Section 161 of the Cr.PC. Thereafter, he stated that on 29.04.2016, the accused appeared before the concerned court and he had formally arrested him vide Arrest Memo (Ex PW7/A). He stated that he had interrogated the accused and recorded his disclosure statement (Ex PW8/B). Thereafter, the accused was produced before court and he was sent to judicial custody on his written request. He stated that during the course of investigation, he had called the complainant, after 2-3 days from the arrest of the accused, to the PS and he had identified chassis with the help of photocopy of the RC (Ex PW3/A). He stated that he had also collected involvement list of 30 criminal cases of accused (Ex PW8/4).

15. On cross examination, he stated that he had not obtained signatures of the complainant on the site plan. He denied the suggestion that no disclosure statement had been made by the accused or that his signatures were obtained against his wishes by coercion. He denied the suggestion that the recovery of scooty and motorcycle had been planted against the accused by the police to work out their pending cases.

16. The statement of the accused was recorded under Section 313 of the Cr.PC. He stated that he was lifted from his house on 11.04.2016, at about 3 pm, by three police officials. He stated that it was incorrect that the police team had asked him to produce documents of the motorcycle and he had failed to produce the same. He stated that it was incorrect that during interrogation, he had disclosed his involvement in a number of cases with his associate Sabir @ Kabooter, who used to allegedly sell him stolen motorcycles. He further stated that he did not make any disclosure statement to the police. He also stated that the IO obtained his signatures on a blank piece of paper and used the same to work out the pending cases. He stated that no recovery was effected from his house and the alleged recoveries had been planted on him. He stated that the stolen motorcycles and spare parts were lying at the office of Special Staff, North East, Yamuna Vihar. He stated that the IO, SI Shahid Ali had demanded a bribe of ₹ 3,00,000/- from him and when he refused to give the same, he was falsely implicated in the present case. He stated that *kalandara* (Ex PW4/C)) prepared by PW-4 is a matter of record.

He stated that he was arrested by the IO before the concerned court, however, the disclosure statement was recorded by the IO himself and his signatures were obtained on it, without explaining the contents of the same. He stated that he has been falsely implicated in this case and the witnesses have deposed against him as they are interested witnesses. He stated that on 11.04.2016, at about 3 pm, he was going to Jama Masjid from his house on his scooty bearing no DL 2SN 1571 with an aluminum nob in his bag and three police officials, who were dressed in civil uniform, came in front of his house and told him that some inquiry is to be conducted from him at the police station. Thereafter, they took him to the police station on his scooty with him sitting in the middle. He further stated that he was detained in the police station from 11.04.2016-12.04.2016. He stated that his brother had visited the police station to inquire about his detention and the IO had demanded bribe of ₹3,00,000/- from him. Further, he stated that when he refused to give the same, the police officials falsely implicated him in a number of cases.

17. The accused further examined himself as DW1. He stated that on 11.04.2016, he was going to Jama Masjid from his house on his scooty bearing no. DL-2SN-1571 with an aluminum nob in his bag. Thereafter, three police officials dressed in civil uniform came in front of his house, asked his name and informed him that some inquiry had to be conducted. Thereafter, he was taken to Yamuna Vihar Special Staff Office with his scooty, wherein they enquired about his previous cases and thereafter, PW-4 took him to the ACP's Office. He stated

that the ACP had inquired about his mobile number but he had left the same at his home. He stated that he made a call to his nephew from the mobile phone of the ACP. He stated that the ACP had asked him to call 2-3 persons along with his food. Thereafter, the ACP inquired as to how much he could arrange to pay SI Shahid, in the presence of his brother Khalil and nephew Tayab. He stated that again said, SI Shahid had inquired about his financial capacity to pay money, in the presence of the ACP. He stated that his brother and nephew refused to pay anything, as he was not indulged in any unlawful activity. Thereafter, he stated that he was arrested on his failure to pay the amount to SI Shahid and he was produced before the concerned court on 12.04.2016.

18. On cross examination, the accused stated that he was going to deliver aluminum nob to one Fayad *Bhai* at his shop in Gali Gadiya, Jama Masjid, however, he did not know the address of Fayad *Bhai* but knew his mobile number. He affirmed that he had not brought any document to prove that he was engaged in the business of manufacturing aluminum nob. He stated that at the time of incident, he was facing about fourteen cases before different courts and all the cases were pertaining to Sections 379 or 411 of the IPC. He stated that he had not been convicted in any of the cases but one case pertaining to PS Dariya Ganj was compromised. He stated that he had compounded three cases pertaining to PS Dariya Ganj and he had settled three-four cases by the way of plea bargaining. He stated that SI Shahid had inquired about his financial capacity and made a

demand for money but it was made while he was taken away in a corner. He stated that neither he informed the concerned ACP regarding the bribe demanded by PW-4 nor he made any complaint to higher authority against the false implication by PW-4 in the present case, as he was not given time to do so. He stated that he had been implicated in fifteen cases after being lifted from his house. He stated that neither he nor his family members have filed any civil or criminal case or complaint against PW-4 or police officials of the concerned PS or ACP regarding the aforesaid. He stated that he was earning ₹18,000-20,000 per month and SI Shahid had demanded ₹3,00,000 from him. He affirmed that he did not make any complaint against any demand. He stated that he had disclosed to the concerned MM that he had been falsely implicated in the present case but no application or written document was filed before the concerned court regarding the same. He denied the suggestion that he was habitually dealing in stolen articles as well as theft and a number of false cases had been lodged against him on account of his involvement in the present case. He denied the suggestion that he had concocted a false story of being lifted from his house or that he had levelled false allegations against the police officials for lodging the said case against him. denied the suggestion that he had deposed falsely.

Discussions and Conclusion

19. Mr. Saini, learned counsel appearing for the appellant assailed the appellant's conviction on multiple grounds. First, he submitted that there is a delay in registration of the FIR. The FIR of the said case was

lodged on 05.04.2016, however, the motorcycle bearing no. DL 8SAZ 7225 belonging to the complainant was allegedly stolen on 03.04.2016.

20. Second, he submitted that the appellant was falsely implicated in the case. He contended that this is apparent from the following: (i) although two-wheelers were allegedly recovered, no keys were recovered; (ii) that no independent witnesses were joined in the alleged recovery proceedings; and (iii) the police officials from PS Jafrabad were not informed although the recovery was effected from a place which was a short distance from the said Police Station.

21. Third, he contended that the appellant was apprehended from his residence on 11.04.2016 at about 3.00 p.m., by three police officials and the said recoveries were planted upon the appellant by the police officials. He contended that no recovery was effected from the residence of the appellant and the said motorcycles and spare parts were lying at the office of Special Staff, North-East, Yamuna Vihar.

22. Fourth, he contended that the prosecution had failed to establish that the vehicle allegedly stolen belonged to the complainant as the original Registration Certificate was not produced. Fifth, he contended that the prosecution had failed to establish the premises from where the recoveries were effected belonged to the appellant. And lastly, he contended that the appellant was not convicted and sentenced in any earlier case and therefore, it could not be concluded that the appellant

was a habitual offender. Therefore, his conviction for an offence punishable under Section 413 of the IPC is not sustainable.

23. None of the contentions advanced on behalf of the appellant are persuasive. The delay in filing the FIR has been adequately explained by the complainant (PW3). He had stated that he had found that his motorcycle was missing at about 10:00 pm on 03.04.2016. He had searched for his motorcycle but it was not found where it was parked. The complainant had immediately made a call to the police at 100. A PCR had come to the spot and he had been asked to report the same at PS Bhajan Pura. He had stated that he visited the said Police Station but he did not have the Registration Certificate of his motorcycle. He again went to the said Police Station one or two days thereafter and on 05.04.2016, he lodged an e-FIR online. This Court finds no reason to doubt the aforesaid explanation. It is also important to note that PW3 was not cross-examined on this aspect. Thus, the same remained unchallenged.

24. The fact that no keys were recovered also does not raise any doubt as to the recoveries made at the instance of the appellant. It does appear that the vehicles were being stripped down to their parts. Further, since the parked vehicles were stolen, the original keys would have remained with the owner. It is also relevant to bear in mind that the appellant has been convicted for dealing in stolen goods and not stealing the vehicles. In the circumstances, the keys to the vehicle may not be of any material value.

25. The fact that no independent witness had been joined in the recovery proceedings also does not indicate that the case set up by the prosecution is false. It is well settled that evidence of police officials cannot be rejected solely on the ground that it is not supported by independent witnesses. In ***Kalp Nath Rai v. State: AIR 1998 SC 201***, the Supreme Court had held that there is “*no legal proposition that evidence of police officers, unless supported by independent witnesses, is untrustworthy of acceptance*”. The Supreme Court had held that in cases where independent witnesses have not been joined, an added duty is placed on the court to adopt greater care while scrutinizing the evidence of police officials. In the present case, the Trial Court found no reason to doubt the testimony of the police officials. This Court has also examined the said testimony and there is no material inconsistency in the testimony of the police officials, which would persuade this Court to doubt the same. The testimony of PW4 and PW6 is consistent in all material aspects and establishes the recovery of stolen property at the instance of the appellant.

26. The appellant’s defence that he had been falsely implicated because he had refused to pay a bribe demanded by the concerned police officials is also without any substance. First of all, the appellant had not made any complaint at the material time. Secondly, the appellant’s testimony in this regard is inconsistent with his responses in his cross-examination. In his examination-in-chief, the appellant (who examined himself as DW1) stated that the concerned ACP had inquired from him as to the amount he could pay to SI

Shahid. He stated that this inquiry was made in presence of his brother Khalil and his nephew Tayyab. He had then changed his stand and said that SI Shahid had inquired about his capacity to pay the money in presence of the concerned ACP. In his cross-examination, he stated that SI Shahid Ali had inquired about his financial capacity to pay the amount demanded after he was taken to a corner of the room and at that time, the concerned ACP was not watching. He also stated that he did not inform the ACP about the demand raised by SI Shahid nor made any complaint in this regard. In view of the above, the appellant's stand that any bribe was demanded from him cannot be accepted.

27. The contention that the prosecution had failed to establish that the motorcycle in question was stolen as the original Registration Certificate (RC) was not produced is also unmerited. A copy of the said RC had been produced and PW3 had also volunteered that the original RC was in the storage compartment (*dickey*) of the motorcycle and therefore, only a copy of the RC could be produced. It is also important to note that the chassis number of the vehicle in question had been duly recorded in the FIR, which was lodged much prior to the appellant being apprehended. In the circumstances, this Court finds no ground to doubt that the motorcycle, which was reported to be stolen by the complainant belonged to him. He had also testified to the aforesaid effect.

28. The contention that the prosecution had failed to establish that the address (H.No. 1009, Gali No. 33, Jafrabad) from where the

recoveries were allegedly effected, belonged to the appellant and therefore the appellant was liable to be acquitted, is also unmerited. There is no dispute that the appellant was a resident of the given premises. The appellant had in his statement recorded under Section 313 of the Cr.PC also clearly stated that he was a resident of H. No. 1009, Gali No. 33, Jafrabad. The bail bond furnished by the appellant also records the same as his residential address. In view of this admitted position, it is not open for the appellant to now suggest that he was not a resident of the said premises.

29. The contention that the appellant cannot be considered as a habitual offender as he has not been convicted is also erroneous. The appellant is involved in a number of cases as is apparent from the SCRB Report (Ex.PW8/4). The same indicates that the appellant is involved in as many as thirty cases and most of the same are under Sections 379/411 of the IPC. During the course of the proceedings, the learned APP had also produced orders relating to FIR no. 946/06 and FIR no. 61/07. The said orders indicate that the matters were compounded. Before the concerned ACMM, the appellant had pleaded guilty in the said cases. His statement made voluntarily and without any force or coercion, to the effect that he was guilty of committing the offences under Sections 379/411/34 of the IPC was recorded.

30. In view of the above, the conclusion of the Trial Court that the appellant is guilty of committing an offence punishable under Section 413 of the IPC cannot be faulted.

31. This Court has evaluated the evidence obtaining in this case and concurs with the view of the Trial Court that the appellant is guilty of an offence punishable under Section 413 of the IPC.

32. The appeal is unmerited and is, accordingly, dismissed.

JANUARY 08, 2021
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VIBHU BAKHRU, J

