

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.01.2021

+ **CRL.A. 973/2017**

MOHD. MUSA

.....Appellant

Versus

STATE AND ANR.

.....Respondents

Advocates who appeared in this case:

For the Appellant : Mr Roshan Lal Saini and Ms Kavita Saini,
Advocates.

For the Respondents : Mr Ravi Nayak, APP for State.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 03.07.2017, whereby the Ld. ASJ, Karkardooma Courts convicted the appellant for committing an offence punishable under Section 411 of the Indian Penal Code, 1860 (hereafter IPC). By an order dated 12.07.2017, which is also impugned in this appeal, the appellant was sentenced to undergo rigorous imprisonment for a period of three years along with a fine of ₹5,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of six months for committing an offence punishable under Section 411 of the IPC.

2. Briefly stated, the facts of the case are that on 07.04.2016, one Mohammed Izhar lodged an online FIR No 10505/16, under Section 379 of the IPC regarding theft of his motorcycle bearing no. DL-5S-AK-3375. Thereafter, on 14.04.2016, Special Staff, North East apprehended the appellant with the stolen vehicle. Further at the instance of the appellant, parts of the two-wheeler vehicle were recovered. The chassis bearing no. 11969 of the abovesaid motorcycle was also recovered from the premises of the appellant and was lodged as DD No. 70B. The accused was arrested in *kalandara* proceedings and was sent to judicial custody. Thereafter, he was arrested in this case from the concerned court, where he was produced on execution of a production warrant with the allegation that he had been habitually dealing with stolen properties and several cases had been lodged against him.

3. Pursuant to the aforesaid FIR, the accused (the appellant herein) was charged with commission of an offence punishable under Section 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 nine witnesses.

4. The Trial Court evaluated the evidence and it was found that the prosecution had established that the appellant was in conscious possession of the stolen articles as the same were recovered at his instance from his premises. The prosecution had also established that the appellant was found riding a stolen vehicle by the police officials.

In view of the above, the Trial Court convicted the appellant for committing an offence punishable under Section 411 of the IPC.

5. HC Vinay Kumar (incorrectly mentioned as HC Vijay Kumar in the deposition) was examined as PW-4. He correctly identified the accused in open court. He stated that he was posted with Special Staff, North East District, at the material time. He deposed that on 12.04.2016, he was checking vehicles along with SI Shahid (PW-6), ASI Rakesh Kumar and Ct. Bhuddan Tyagi at 66, Foota Road, Near MCD Office, Yamuna Vihar at Kardam Puri Bus Stop. At about 5:30 pm, the accused (driving an Avenger Bajaj bearing registration No. DL 6S 2221) was stopped and checked. He stated that the accused could not produce the documents relating to the motorcycle that he was riding on checking by PW-6. He stated that on deep interrogation, the aforementioned vehicle was found to be stolen property. He stated that the accused also disclosed that other stolen vehicles and parts of vehicles can be recovered from his house. PW-6 prepared *kalandara* (Ex PW4/A), site plan of the place of arrest (Ex PW4/C) and recorded the disclosure statement of the accused (Ex PW4/B). Thereafter, they went to the house of the accused, 1009, Gali No. 33, Jafrabad and the accused pointed towards six scooties with different registration numbers, three motorcycles, three engines of two wheelers, ten chassis of two wheelers, number plates of vehicles, registration number and other loose parts of two wheelers like *tanki*, seats, indicators, chain rim and tyres etc., which were lying in the hall of the aforesaid house. The accused stated that the stolen properties were purchased by him from

thieves after making payment to them. Thereafter, PW-6 seized the stolen goods vide seizure memo (Ex PW4/D) under Section 102 of the Cr.PC and prepared site plan of the place of recovery (Ex PW4/E). He stated that on completion of the aforementioned recoveries, the police officials reached PS Bhajan Pura and deposited the recovered articles with MHC(M) in intact condition and the accused was put in lock up. He stated that one of the chassis of a motorcycle was in relation to a case of theft which had been registered at PS Bhajan Pura. He stated that his statement as well as the statements of ASI Rakesh Kumar and Ct. Bhullan Tyagi were recorded by PW-6. Thereafter, PW-6 passed on the said information to the concerned PS and HC Vikram (PW-8), the IO of the present case, was also been informed about the recovery of chassis of the stolen motorcycle. He also stated that PW-6 had recorded DD no 12A (Ex PW2/A) at PS Bhajan Pura. He correctly identified the case property, that is, chassis of motorcycle bearing no. MDLHA10ASC9L11969.

6. The testimony of SI Shahid Ali, who was examined as PW-6, is consistent with the testimony of PW-4. PW-6 correctly identified the accused 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 and Ct. Braham Pal were busy in vehicle checking at 66, Foota Road, near MCD Court, C Block, 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 he could not produce any

document pertaining to his motorcycle or his driving license (DL). Thereafter, he checked the chassis number and the engine number of the above-mentioned vehicle and the same were found to be incorrect. He stated that the accused told him that he had stolen the aforesaid motorcycle from the area of Panchsheel Garden, Naveen Shahdara, about a week prior to that. He stated that he had verified from the control room by using Zipler that the same was found to be a stolen property under an e-FIR. Thereafter, the aforesaid motorcycle was seized under Section 102 of the Cr.PC. Upon interrogation, the accused disclosed his involvement in several cases along with his associate Sabir @ Kabooter. The accused disclosed that Sabir used to sell stolen motorcycles to him. He further disclosed that some stolen two wheelers and parts of two wheelers can be recovered from his house i.e. H. No. 1009, Gali No. 33, Jafrabad, Delhi. The disclosure statement of the accused was recorded (Ex-PW4/B). Thereafter, at about 7 pm, PW-6 stated that he reached the house of the accused and the accused pointed towards the hall of his house, where about 10-12 motorcycles and scooties were kept along with parts of motorcycles. He stated that 20 registration plates of two wheelers, 2 engines of scooties, 8 chassis of motorcycles, 2 chassis of scooties, some sheets, chains, mudguards etc were recovered from the premise of the accused. The aforesaid items were seized and seizure memos were prepared in detail (Ex PW4/D). He stated that one chassis bearing no 11969 of a motorcycle was also recovered. The same were brought to PS Bhajan Pura and deposited with MHCM. He stated that he prepared *kalandara* (Ex PW4/A) against the accused, recorded DD No. 12A (Ex PW2/A) and statements of police officials (in whose

presence recovery was made), prepared site plans of the place of recovery (Ex PW4/E) and site plans of the place where the accused was arrested (Ex PW4/C). Thereafter, the accused was put up in lock up of the police station. He stated that on the next day, when the accused was produced before the concerned court, he presented *kalandara* before the court and the accused was sent to judicial custody. He correctly identified the chassis of the vehicle of the present case.

7. Ct. Prem Chand was examined as PW-5. He deposed that he had recorded information about the recovery of stolen goods from the accused in DD No. 70B (Ex PW5/A).

8. There is no reason to doubt the testimony of PW-4 and PW-6. In view of the evidence led by the prosecution, it is clearly established that the chassis of the motorcycle that was the subject matter of the FIR in question (FIR No. 010505/2016) was recovered from the appellant. Whilst the same did not establish that the appellant had committed an offence punishable under Section 379 of the IPC; it did establish that he was dealing with stolen goods (parts of two wheelers).

9. It was contended on behalf of the appellant that the prosecution had failed to establish that the chassis recovered (chassis no. MDLHA10ASC9L11969) was that of a stolen vehicle. It was pointed out that the complainant (Mohd. Izhar – examined as PW-3), who claimed to be the owner of the said vehicle, testified in his examination-in-chief that he was the owner of the motorcycle bearing no. DL5SAK3375 and also produced the RC which indicated that the

chassis number of the said vehicle was MBLHA10ASC9L11969. However, in his cross-examination, he resiled from his statement that he was the owner of the said vehicle and stated that his brother Mohd. Istkar was the registered owner. It was contended on behalf of the applicant that since the owner of the vehicle bearing registration No. DL5SAK3375 was not examined, there is no evidence to establish that the chassis in question (chassis bearing no. MDLHA10ASC9L11969) was stolen.

10. In this regard, it would be necessary to examine the testimony of Mohd. Izhar, who was examined as PW-3.

11. PW-3 stated that he is the registered owner of motorcycle Splender Pro bearing no. DL5SAK-3375. He deposed that on 07.04.2016, at about 2 pm, he had stationed the aforementioned motorcycle in front of his house and at about 4 pm, he discovered that his motorcycle was missing from the spot. And, on the same day, he lodged an e-FIR for theft of his motorcycle. Thereafter, he visited PS Bhajan Pura and made inquiries from the police officials and was informed that the FIR for theft of his motorcycle had been registered. He stated that on 08.04.2016, police officials visited the spot from where the motorcycle was stolen. He testified that a site plan (Ex PW3/1) was prepared by the police, at his instance. He stated that after some days, he was informed by the police officials that the chassis of his motorcycle was found and the same was identified by him. He further stated that no other part of his motorcycle was recovered. He also proved that as per the RC of his motorcycle (Ex. PW3/A), the

chassis no. is MBLHA10ASC9L11969. He identified the chassis brought by the MHC(M) in court. In his cross examination, he stated that he is not the registered owner of the aforesaid vehicle and his brother Mohd. Istkar is the registered owner.

12. Undeniably, the statement made by PW-3 in his cross-examination is inconsistent with his testimony that he was the owner of the vehicle in question. However, the same is not material because his testimony that he had parked the motorcycle in front of his house remains uncontroverted. The Trial Court had evaluated his evidence and had concluded that there is no reason to doubt that he was in possession of the motorcycle even though his brother was the registered owner of the same. Thus, there is no reason to doubt the allegation that the said motorcycle had been stolen from the place where it was parked by PW3.

13. In view of the above, this Court finds no reason to interfere with the conclusion of the Trial Court. This Court concurs with the decision of the Trial Court that the prosecution has established that the appellant is guilty of committing an offence punishable under Section 411 of the IPC.

14. The Trial Court has sentenced the appellant to undergo rigorous imprisonment for period of three years along with a fine of ₹5,000/- and in default of payment of the fine, to undergo simple imprisonment for a further period of six months for committing an offence punishable under Section 411 of the IPC. This Court finds no ground to interfere with this sentence as well. However, as noticed above, the disclosure made by the appellant had also led to recovery in another FIR. The

chassis of a two wheeler bearing registration no. DL-8SA-Z-7225 – which was reported stolen and pursuant to which e-FIR. no. 10208/16, under Sections 379/411/413 of the IPC was registered with PS Bhajanpura – was also recovered. The appellant was prosecuted pursuant to the said FIR and by a judgement dated 21.01.2017 passed by the Ld. ASJ, he was convicted for an offence punishable under Section 413 of the IPC. By an order dated 28.01.2017 the appellant was sentenced to undergo rigorous imprisonment for a period of seven years and pay a fine of ₹ 40,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of one year for committing the offence punishable under Section 413 of the IPC. The appellant's appeal [Crl.A 217 of 2017] against the said conviction and sentence was also rejected by this Court.

15. In the given circumstances, this Court is of the view that the sentence awarded to the appellant ought to run concurrently with the sentence awarded to him in that case – SC no. 118/2016 arising out of FIR bearing no. 10208 of 2016 under Sections 379/411/413 of the IPC registered with PS Bhajan Pura. It is so directed.

16. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

JANUARY 25, 2021
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