

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Before: Hon'ble Justice Sugato Majumdar

CRA 558 of 2015

**Mintu Sk.
Vs.
The State of West Bengal**

For the Appellant	:	Mr. Dipanjan Chatterjee, Ms. Sananda Bhattacharyya, Ms. Puja Kar.
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P., Mr. Imran Ali, Ms. Debjani Sahu.
Hearing concluded on	:	23/08/2022
Judgment on	:	24/08/2022

Sugato Majumdar, J.:-

The instant criminal appeal is preferred against the judgment of conviction and order of sentence dated 28/07/2015, passed by the Additional Sessions Judge, Kalyani, Nadia in Sessions Trial No. 10 (6) 2011 whereby the Appellant was convicted under section 411 of the Indian Penal Code and sentenced to three years rigorous imprisonment and fine of Rs. 5000/- in default simple imprisonment of six months further.

The de-facto complainant Sukhdeb Ghosh lodged a written complaint on 20/08/2010. It was alleged in the written complaint that Sri Susanta Ghosh, the brother of the de-facto complainant, who had a business of potato, was returning home from Kanchrapara Bazar after collecting a sum of Rs. 94,000/- as his business dues. He was on his motor cycle. At that time three unknown persons began to follow him. They intercepted him on the way, assaulted him and tried to snatch away his money. He somehow managed to escape. But the three persons continued to follow him. Near Bagher Khal they again intercepted him and fired gunshot at his left knee. He fell down from his motor cycle and those miscreants snatched away from him the said amount of Rs. 94,000/-

as well as his motor cycle. The said victim Susanta Ghosh was taken to a Kalyani J.N.M. Hospital where he was admitted and treated.

The written complaint was received by Kalyani Police Station and the case was registered as Kalyani P. S. Case No. 376/2010 dated 20/08/2010 under section 394 of the Indian Penal Code. On being so entrusted with, the Investigating Officer conducted investigation, visited the place of occurrence, prepared sketch map with index, examined available witnesses under section 161 of the Code of Criminal Procedure 1973, arrested the accused persons, recovered the snatched motorcycle from the present Appellant, on the basis of the statement of one of the accused and all other necessary and incidental acts. On completion of the investigation he filed charge sheet on 18/11/2010 under section 394/109 of the Indian Penal Code against one of the accused Monu Shaw, under section 394/397 of the Indian Penal Code against two other accused persons and under section 411 of the Indian Penal Code against the present Appellant.

Charges were framed under section 411 of the Indian Penal Code against Samar Roy and the present Appellant and under section 394/109 against another accused Manu Shaw; Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried. Therefore, the trial began.

In course of trial, the prosecution examined eleven witnesses and produced documents which were variously marked as Ext. 1 to Ext. 7.

The accused persons were examined under section 313 of the Code of Criminal Procedure. Defense of the accused persons were false implication. Out of five accused persons, Sushil Singh @ Sonu absconded. Warrant of Arrest was issued against him in terms of an Order of the Trial Court dated 02/02/2012. Another accused Chandan Das also absconded. Warrant of Arrest was issued against him on 19.02.2013. Since whereabouts of the two accused persons could not be known and they could not be arrested, the Trial Court filed the trial against the aforesaid two accused persons, in terms of an Order dated 18th July, 2013.

The Trial Court, in terms of the impugned Judgment acquitted the two other accused persons but convicted the present Appellant under section 411 of the Indian Penal Code.

On being aggrieved and dissatisfied, the present appeal is preferred.

Mr. Chatterjee the Learned Counsel appearing for the Appellant, submitted that seizure of the stolen motor-cycle is shrouded with mystery. Seizure witnesses turned hostile. P.W. 5, Gayeshuddin Sk, one of the seizure witnesses, deposed that he signed on blank paper as per instruction of police. P.W. 6, Asraf Ali Sk, the other seizure witness stated in evidence that he signed the seizure list inside Kalyani Police Station. Oral testimony of these two witnesses cannot be relied upon, according to Mr. Chatterjee. The Investigating Officer, P.W. 10, stated in examination-in-chief that he seized the motor-cycle from the Appellant. Again he stated in course of examination-in-chief, that from the seizure witnesses he came to know that police of Kalyani Police Station seized the motor-cycle. Such contradictory statements belies credibility of an witness making him unworthy to be trusted upon. Therefore, according to him, the impugned Judgment is liable to be set aside against the present Appellant.

It is further submitted by Mr. Chatterjee that close scrutiny of the seizure list shows signature of two persons in the seizure list. One name is Asraf Ali Sk and the other name is Md. Tayejuddin Sk who was not examined as witness. According to him, P.W. 5 Gayesuddin Sk is not at all any seizure witness and his testimony should be discarded.

Per contra Mr. Imran Ali, appearing for the State submitted that seizure of the motor-cycle from the custody of the Appellant is proved. Eventhough hostile, it is clear from the oral testimony of P.W. 5, P.W. 6 and P.W. 10 that the said motor-cycle was recovered from the custody of the Appellant and the later failed to account for such possession. The Appellant offered no explanation how he got possession of the stolen motor-cycle, while examined under section 313 of the Code of Criminal Procedure. In nutshell, Mr. Imran Ali submitted that it is established beyond iota of doubt that the Appellant is receiver of stolen property and the Trial Court rightly convicted the Appellant.

I have heard rival submission.

The ambit of the present appeal is limited to the extent whether the Appellant was guilty of offence under Section 411 of the Indian Penal Code.

Section 411 of the Indian Penal Code states:

“411. Dishonestly receiving stolen property – 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 order to bring home the guilt of an accused, prosecution must prove –

- i) that stolen property was in possession of the accused.
- ii) that some person other than the accused had possession of the property before the accused got possession of it
- iii) the accused must dishonestly receive it, or must dishonestly retain it, knowing or having reason to believe, that the said property is stolen property.

[Trimbak vs. State of Madhya Pradesh, AIR 1954 SC 39].

Explaining the scope of the section, the Supreme Court of India observed in **Mahabir Sao vs. State of Bihar [(1972) 1 SCC 505]** that crucial points in a case under Section 411 of the Indian Penal Code are whether the property before the court were stolen property and whether the same had been attached from the possession of the Appellant if either of these points was not proved, the offence could not be brought home.

In the instant case, it is not in dispute that the motor cycle was stolen. The question then remains whether it was in the possession of the present Appellant or recovered from his possession and what explanation he offered for such possession. In other words, whether the stolen motor cycle was recovered from the possession of the Appellant which possession he could not account for.

P.W. 5 stated in evidence that he put signature on blank paper. P.W. 6 stated in examination-in-chief that he had no knowledge whether any article was recovered from

the possession of the Appellant and that he put signature on the seizure list on the next date. The Police visited the village and he signed seizure list inside Kalyani Police Station next day. He further stated that he put his signature on the seizure list which was prepared by police. Evidence of P.W. 5 and P.W. 6 are not reliable. Possibly they were in attempt to screen the Appellant. The Investigating Officer, P.W. 10 stated in examination-in-chief that he seized the motor-cycle from the possession of the Appellant. He identified the seizure list (Ext. 5). He again stated in examination-in-chief that the witness Gayesuddin stated him that on 12/13.09.2010, night police of Kalyani Police Station came to his village at about 1:00 A.M. and arrested the Appellant from his residence and one motor-cycle was seized preparing the seizure list. P.W. 6 Asraf Ali Sk also stated him this, as he deposed in course of examination-in-chief. These statements of P.W. 10 caste a doubt surrounding seizure of the motor-cycle and also raises the question whether the motor cycle was seized by P.W. 10, in presence of P.W. 5 and P.W. 6; whether P.W. 5, P.W. 6 and P.W. 10 signed the seizure list (Ext. 5) contemporaneous to the seizure and whether at all seizure was made from the Appellant. All these questions are unanswered. Since doubt shrouds the seizure, benefit of such doubt must go in favour of the Appellant.

Trial Court overlooked this discrepancy and simply jumped into conclusion that the motor cycle was seized from the present Appellant without appreciating the conspectus of facts. Therefore, the finding of the Trial Court demands interference.

In nutshell, the instant appeal is allowed. The impugned judgment of conviction and order of sentence is hereby set aside.

The Appellant is set at liberty and he is also released from bail bond.

Copy of the Judgment along with Lower Court Records be send back to the Trial Court.

The appeal is accordingly disposed of along with pending application, if any.

(Sugato Majumdar, J.)