

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

CRR No.3367 of 2016

Date of decision : 30.11.2022

Balbir Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Lakhwinder S. Mann, Advocate
for the petitioners.

Mr. Sarabjit S. Cheema, Dy. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Petitioner has assailed the judgment dated 28th of July, 2016 passed by Additional Sessions Judge, Fazilka whereby the judgment of conviction passed against the petitioner under Sections 454/411 IPC by Trial Court, on 3rd of May, 2014 stands confirmed and the petitioner has been ordered to be acquitted for the offence punishable under Section 380 IPC in FIR No.97 dated 2nd of October, 2011 registered for the offences under Sections 454, 380, 411 IPC, at Police Station Arniwala.

2. The law was set into motion by Resham Singh son of Boota Singh alleging that on 24th of September, 2011 at about 8:00 am while he along with his family had gone to fields for plucking cotton, his house was ransacked after breaking open the locks. On checking it was found that one pair of gold ear rings weighing $\frac{3}{4}$ Tolas, Two Gents rings, one Ladies ring weighing about $\frac{1}{2}$ Tola, Two pairs of ear rings, 5 Nose pins, one gold “OM”

weighing ¾ Tola, Four pairs of silver anklet weighing 20 Tolas, One silver bracelet weighing 3 Tolas, Two wrist watches and cash amount of Rs.4000/-, which were lying in a bag made of cloth and all these articles were of the value of 70,000/- was missing. Petitioner along with one Jagga Singh son of Sher Singh were booked and put to trial. Trial Court after analyzing the evidence on record found both the accused guilty of offences punishable under Sections 454, 380, 411 IPC and sentenced them as under :-

Sr. No.	Under Section	Sentence to undergo	Fine	In default of payment of fine
1	454 IPC	Rigorous Imprisonment for 3 years	Rs.1000/-	Rigorous Imprisonment for 15 days
2	380 IPC	Rigorous Imprisonment for 3 years	Rs.1000/-	Rigorous Imprisonment for 15 days
3	411 IPC	Rigorous Imprisonment for 3 years	Rs.1000/-	Rigorous Imprisonment for 15 days

3. In appeal preferred by the petitioner he stands acquitted of offence punishable under Section 380 IPC but conviction *qua* offences punishable under Sections 454/411 IPC stands confirmed.
4. Ld. Counsel for the petitioner submits that the petitioner was never charged for offence punishable under Section 411 IPC and, thus, his conviction *qua* the same cannot be sustained. He further argues that once the petitioner stands acquitted for offence punishable under Section 380 IPC his conviction under Section 454 IPC alone also needs to be quashed as

Section 454 is not an independent offence. Further he submits that the judgment passed by the Ld. Appellate Court is result of misreading of evidence as no recovery was ever effected from the petitioner and the Appellate Court erred in holding that :

“12. Admittedly, the stolen articles have been recovered from the possession of both the accused in the presence of complainant and the same were also released to the complainant on Sapurdari during the trial of the present case.”

5. Contention is that the Appellate Court misread evidence *qua* recovery to hold the same against both the accused(s) whereas as per record the same was effected only from Jagga, the co-accused.

6. Mr. Cheema submits that once the petitioner was put to trial, Court was well within its power to alter the charge at any stage of trial by resorting to Section 216 Cr.P.C. However, he does not dispute the fact that offence punishable under Section 454 IPC is not stand alone offence and after acquittal of the petitioner of offence punishable under Section 380 IPC, 454 IPC cannot be maintained.

7. I have heard Ld. Counsel for the parties and have gone through the records of the case.

8. At the outset it needs to be recorded that the finding *qua* recovery recorded by the Appellate Court is indeed against the record as the recovery has been effected only from the Jagga and the same cannot be attributed jointly to both the accused(s). It is also matter of the record that

the petitioner was never charged for offence punishable under Section 411 IPC. There is no order on record to show that the Trial Court ever exercised power under Section 216 Cr.P.C. to alter the charge and, thus, the plea raised by Mr. Cheema based upon Section 216 Cr.P.C. sans merit and deserves rejection.

9. Trite it is that once an accused has not been charged for the offence, the conviction for the same cannot be sustained. Reference can be made to the law laid down by the Apex Court in **Shabad Pulla Reddy vs. State of Andhra Pradesh, (1997) 8 SCC 495** wherein it was held that :

“This apart, even if we proceed on the assumption that evidence regarding the identification of the articles and recovery thereof is acceptable, still then, no presumption can be drawn after such a long lapse of time that they were party to the murder itself. The most favourable conclusion that can be drawn for the prosecution from such recovery is that they dishonestly retained the stolen properties knowing them to be stolen but in absence of any charge framed under Section 411 I.P.C. and on their acquittal of the charge under Section 396 I.P.C., no order of conviction can be recorded against them.”

10. Thus, the Courts below erred in holding the petitioner guilty of offence punishable under Section 411 IPC in the absence of charge.

11. In view of the discussion held hereinabove, it is ordered that :

- (i) CRR No.3367 of 2016 is allowed.
- (ii) The impugned judgment/order of conviction dated 3rd of May, 2014 passed by Judicial Magistrate 1st Class,

Fazilka and judgment passed by Additional Sessions Judge, Fazilka dated 28th of July, 2016 whereby the appeal of the petitioner has been partly allowed and he has been acquitted under Section 380 IPC and convicted under Sections 454/411 IPC and sentenced to undergo Rigorous Imprisonment for 3 years and fine of Rs.1,000/-, and in default of fine to further undergo Rigorous Imprisonment for 15 days, are hereby set aside.

- (iii) Petitioner namely Balbir Singh is acquitted of the charges that were framed against him.
- (iv) Fine, if paid, be refunded to him.

November 30, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No