

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 579 of 2004

Madan Rajak & Anr.

-Vs-

State of West Bengal

For the Appellants	: Mr. Milon Mukherjee Mr. Biswajit Manna Mr. Aritra Bhattacharya
For the State	: Mr. Binay Kumar Panda Mr. Subham Bhakat
Heard on	: 09.02.2023, 10.02.2023
Judgment on	: 27.04.2023

Ananya Bandyopadhyay, J. :-

1. This appeal is directed against Judgment and Order dated 25.8.2004, passed by Learned Sessions Judge, Bankura in Sessions Trial No. 04 of June, 2003, arising out of Sessions Case No. 11 of April, 2003, convicting the appellants under Section 414 of the Indian Penal Code, sentencing the appellants to suffer rigorous imprisonment for six months each.
2. The prosecution case emanated on the basis of a suo moto complaint by the police officer on 29.1.1999, which precisely stated on his way to Saldiha pursuing his government duty along with C-782, Mathur Ch. Garai and C-1026, Ajit Patra both of

Indpur Police Station intercepted one lorry bearing registration No. WB53-3611 at Dhogra More approaching from Purulia District, which was loaded with coal. On enquiry the driver of the aforesaid lorry failed to furnish valid documents concerning the coal carried by the aforesaid lorry as well as the ownership and his driving license. On further interrogation, the driver disclosed the name of the owner of the said lorry to be Haradhan Chand, son of Manick Chand along with whom the driver procured coal from the Dobra Side under Para Police Station, District Purulia and illegally transmitted the same to Khatra of Bankura District.

3. The complainant police officer was of the conviction that the owner of the lorry along with the driver was engaged in thievery of coal and stealthily continued with such business which according to him fell within the purview of Sections 379/411/413/414 of the Indian Penal Code and Section 34 of Mines and Minerals Act. The complainant seized the lorry under a seizure list signed by the witnesses. He further seized certain sample of coal loaded in the lorry and detained the driver.
4. On returning to the police station with seized lorry and driver the complainant initiated a specific case under Sections 379/411/413/414 of the Indian Penal Code and Section 34 of Mines and Minerals Act against the driver and owner of the lorry being No. WB – 53/3611.

5. Based on the aforesaid complaint formal FIR No. 2/99 dated. 29.01.99 under Sections 379/411/413/414 of the Indian Penal Code and Section 34 of Mines and Minerals Act was instituted.
6. On completion of the investigation, charge sheet being No. 11/99 dated. 30.07.99 was submitted under Sections 413 and 414 of the Indian Penal Code against the appellants. Charges were framed to which the appellants pleaded not guilty and claimed to be tried.
7. In order to prove its case the prosecution cited three witness and exhibited certain documents, defence cited one witness and exhibited one document.
8. The Learned Advocate for the appellant submitted the evidence on record did not justify the conviction of the appellants under Section 414 of the Indian Penal Code. It was further submitted the disputed coal belonged to one Fatick Kundu who purchased from “Sri Durga Coal Traders” of Dubra, district Purulia. The relevant documents concerning such coal were given to the officer-in-charge of Indpur Police Station, which were not taken into consideration.
9. Moreover, in accordance to the provision of Section 110 of the Evidence Act, the burden of proof as to ownership of the lorry shifted upon the complainant.
10. The Ld. Advocate for the appellants further submitted that in order to convict the accused under Section 414 of the Indian Penal Code it was incumbent upon the prosecution to prove the

recovered coal from the lorry to be stolen property with reasons to believe to be the same to be stolen property and having voluntarily assisted in stealing for disposing of or making away with it. In the instant case conviction under Section 414 of the Indian Penal Code was unjustified since prosecution failed to prove the recovered coal from the lorry to be stolen property, to be intentionally disposed of collusively and therefore, the appeal shall be allowed.

11. The Ld. Advocate for the appellant relied on the decisions cited in the following list of judgments:

- a) CRA 113 of 2013, Nilmadhab Majhi & Ors. dated 04.08.2006
- b) CRR 3752 of 2005, Kamal Kumar Das & Ors. dated 14.02.2007
- c) CRR 2143 of 2007, Kamal Kumar Das, dated 10.03.2008
- d) CRR 2774 of 2008, Binod Kumar Agarwal & Ors., dated 25.11.2008
- e) RR 425 of 2009, Binoy @ Subhash Agarwal & Ors., dated 15.09.2009
- f) CRR 3355 of 2009, Sisir Ghosh & Ors., dated 25.08.2010
- g) CRR 1193 of 2001, Sunil Kumar Jain, dated 21.12.2011

12. The Ld. Advocate for the State submitted that appellant no. 1 i.e. the driver failed to produce requisite papers with regard to the ownership of the lorry, the carriage of the coal and his driving license. The coal and the truck were seized under a seizure list sufficient enough to constitute ill-motive in accomplishing the offence charged against the appellants. The seizure list was

prepared in the presence of two constables on duty. The challan alleged to be issued by “Sri Durga Coal Traders”, Dubra, Purulia within the jurisdiction of Para Police Station, District Purulia on verification was found to be non-existent as a coal supplier. The Ld. Advocate for the State referred to the observation of the Learned Trial Judge in the impugned judgment which states as follows :

“ It is the case of the prosecution that the driver and the owner of the lorry obtained the coal by illegal means and were engaged in dealing with the stolen property for continuing clean destine business. It is the case of the defence, as it appears from the trend of evidence, that the coal in question was purchased by one Fatick Kundu and the lorry was the only carrier of the same.

From the materials on record, it can be said that the seizure of the coal was made under a seizure list – otherwise the defence could not certainly raise the plea that the seized coal belonged to Fatick Kundu, who purchased the same from Sri Durga Coal Traders, Dubra, Purulia (Ext. A). Ext. A shows that it is a chalan/memo, dated 26.01.1999 stands in the name of Fatick Kundu of Bumurtore, Bankura. It is curious to note that the defence did not take pain to examine Fatick Kundu showing bonafide transaction of Ext. A. It is apparent from the evidence of D.W. 1 that he is unable to produce the relevant chalan book. Moreover, the alleged Fatick Kundu has not come forward to claim the seized coal which is the normal conduct of genuine purchaser though he had scope to do so. The evidence of D.W. 1 with regard to the Ext. A does not convince me as to the reliability and its genuineness in the absence of relevant chalan book and other business

document. Thus, the plea of defence counts no force. On the other hand, it is not always acceptable that the evidence of the prosecution side cannot be accepted as reliable merely on the plea that they are police personnel. I do not find any cogent reason to disbelieve the evidence of the prosecution side when the seizure is practically admitted. Moreover, the signature of accused Madan Rajak appearing in the seizure list (Ext. 1) has not been challenged.

In the aforesaid discussion, I am in doubtful regarding the genuineness of Ext. A. Thus, there is scope to believe that the accused persons in collusion with each other have procured the coal in illegal process knowing it to be stolen property for continuing their illegal business. They were in conscious possession of the coal knowing it to be blemished. There is no satisfactory evidence that the accused persons had any previous antecedent of habitual receivers or dealers in stolen property.”

13. The Learned Advocate for the State submitted that the prosecution succeeded in proving its case and the appeal shall be dismissed.
14. Assailing the evidence adduced by the prosecution witnesses, it transpired P.W. 1 to be the constable posted at Indpur Police Station on the relevant date, who accompanied the complainant Amiya Das, being the erstwhile officer-in-charge of Indpur Police Station to Saldiha on patrolling duty. In the afternoon the disputed lorry carrying coal approached from Belut side proceeding towards Dhagaria More. On inspection of the said vehicle, the driver failed to produce valid documents with regard to the ownership, procurement and carriage of coal, on demand, which were seized under a seizure list signed by him marked as

Exhibit 1, which was also signed by Mathur Ch. Garai, who was also a constable. The vehicle along with the coal was taken to the police station and the driver of the vehicle was arrested. During his cross examination P.W. 1 stated the R.C. Book, Tax Permit, Insurance Policy, Road Challan etc. were seized by the de-facto complainant. He further denied the driver to have produced the paper relating to the coal which the de-facto complainant intentionally refused to receive.

15. P.W. 2 the de-facto complainant reiterated the statement of the complainant in his deposition emphasizing to have lodged the suo moto FIR which was marked Exhibit – 2 and the formal FIR was marked Exhibit by 2/1. He identified the seizure list prepared in the presence of the constables marked Exhibit 1/1. The de-facto complainant conducted the investigation having prepared the sketch map of place of occurrence marked Exhibit 3. During investigation he examined the seizure list witnesses and also seized the papers of the vehicle produced by Monoranjan Chand at the police station marked as Exhibit 4. P.W. – 1 stated to have received a challan in respect of the coal through Court. On verification he found that the coal supplier namely Sri Durga Coal supplier alleged to have issued the said challan, never existed. He examined the local witnesses and one Alok Shanti Mandal was given the custody of the seized coal under a Zimmanama, the carbon copy of which was marked as Exhibit 5.

16. On 29.07.99 the investigation of the case was transferred to S.I Sibaprasad Singh who submitted the chargesheet. During his cross examination P.W. 2 denied to have examined any Panchayat member or Pradhan, Upapradhan of Dubra Panchayat or any member of Panchayat Samity. P.W. 2 did not examine any officer of Para Police Station nor did he receive any complaint from anybody alleging the same to have been stolen from their possession. He did not contact any coal authority and further deposed of absence of previous record of the appellants entangled with the allegation of stealing coal. He further stated to have received a copy of a paper through the Court revealing Bharat Cooking Coal Ltd. to have sold coal to Bishnu Vanijya of Santaldih. He also received a copy of paper showing Bishnu Vanijya to have sold the coal to Sri Durga Coal Traders. He received another paper showing Sri Durga Coal Traders to sell the coal to Fatick Kundu. P.W.-2 did not examine anybody of Bharat Cooking Coal Ltd. or Vishnu Vanijya.
17. P.W. -3 being the constable of police conceded to the deposition of P.W.-1, identified his signature on the seizure list marked Exhibit 1/2. He failed to identify the driver in Court, though, he stated the driver to have signed the seizure list. During his cross-examination, he expressed his inability to state the papers to have been seized by the police officer.
18. D.W. 1 stated to the proprietor of "Sri Durga Coal Traders", Dubra, Purulia. D.W. 1 deposed to purchase coal from Bishnu Vanijya, a

firm of Dubra, Purulia and used to issue receipt/cash memo to the purchase of coal. The cash memo was prepared with two carbon copies. The original copy was given to purchasers and the first carbon copy of the cash memo was given to the carrier and the second carbon copy was kept with them. D.W. 1 identified the carbon copy of challan/cash memo issued by “Sri Durga Coal Traders” dated. 26.01.99 in the name of Fatick Kundu. He identified the signature of Dipak Ghosal, the then Manager of aforesaid firm with its seal. The carbon copy of the challan dated. 26.01.99 was marked exhibit A with objection. During his cross examination D.W. 1 stated his inability to produce any document to show that Dipak Ghosal, was the then Manager of the firm. He also stated to be unable to produce the relevant challan book after lapse of so many years.

19. The necessary ingredients of comprise an offence under Section 414 of the Indian Penal Code are:

- (i) voluntarily assists in concealing or disposing of or making away property
- (ii) knowledge or reason to believe that property is stolen property.

Therefore, the effectivity of the provisions of Section 414 of the Indian Penal Code shall primarily infer to deduce the property to be stolen with certitude of knowledge or reason of credence of its

purloin. Such embezzled property must be concealed, disposed of or make away with voluntarily assistance.

20. The de-facto complainant, PW-2 in his evidence asserted the receipt of a challan in respect of the coal through the court. He further deposed to have verified the challan without the existence of the coal supplier namely Shri Durga Coal Traders. He stated to have examined the local witnesses. However the prosecution did not cite any of such local witnesses. The seized coal was given to the custody of Sri Alok Shanti Mondol whose identity and capacity to receive the coal was not disclosed. P.W.-2 stated the failure of the driver of the vehicle to produce any paper relating to the coal and the vehicle. P.W.-2 further stated that he examined the seizure witnesses and also seized the papers of the vehicle which were produced by Manoranja Chand at the police station which was marked Ext. 4. According to the document marked as Ext.4. the following documents were seized :

1. R/C of lorry No. WB-53/3611 in the name of Haradhan Chandra S/o Manik Lal Chandra of Raghunathpur Dist. Purulia valid upto 12.1.2000
2. Temporary Permit of Lorry No. WB-53/3611 in the name of Haradhan Chandra for Birbhum, Burdwan, Bankura and Purulia district valid upto 08.2.99.
3. Insurance certificate of lorry No. WB-53/3611 valid upto 28.8.99.

21. During his cross-examination PW-2 stated that he did not examine any Panchayat member or Panchayat Pradhan or Uppradhan of Dubra Panchayat, nor did he examine any member of the Panchayat Samity or any officer of Para Police Station. PW-2 did not receive any complaint from anybody alleging coal to have been stolen from their possession. PW-2 did not contact coal authorities. According to PW-2 there was no previous record against the accused persons of accusation of stealing coal. During his cross-examination PW-2 stated that *“Through Court I received a copy of a paper showing that Bharat Cooking Coal Ltd. Sold coal to Bishnu Vanijya of Santaldihi. I also got another copy of paper showing that Bishnu Vanijya sold the coal to Sri Durga Coal Traders. I also got another paper showing that Sri Durga Coal Traders sold the coal to Fatick Kundu. I did not examine anybody of Bharat Cooking Coal or Bishnu Vanijya”*.

22. The Learned Trial Court in the impugned judgment has observed as follows:

“From the materials on record, it can be said that the seizure of the coal was made under a seizure list – otherwise the defence could not certainly raise the plea that the seized coal belonged to Fatick Kundu, who purchased the same from Sri Durga Coal Traders, Dubra, Purulia (Ext. A). Ext. – A shows that it is a challan/memo. dated 26.01.99 stands in the name of Fatick Kundu of Dumurtore, Bankura. It is curious to note that the defence did not take pain to examine Fatick Kundu showing bonafide transaction of Ext. A. It is apparent from the evidence of D.W. 1 that he is unable to produce the relevant challan book.

Moreover, the alleged Fatick Kundu has not come forward to claim the seized coal which is the normal conduct of a genuine purchaser though he had scope to do so. The evidence of D.W. 1 with regard to the Ext. A does not convince me as to the reliability and its genuineness in the absence of relevant challan book and other business document. Thus, the plea of defence counts no force. On the other hand, it is not always acceptable that the evidence of the prosecution side cannot be accepted as reliable merely on the plea that they are police personnel. I do not find any cogent reason to disbelieve the evidence of the prosecution side when the seizure is practically admitted. Moreover, the signature of accused Madan Rajak appearing in the seizure list (Ext. 1/1) has not been challenged.

In the aforesaid discussion, I am in doubtful regarding the genuineness of Ext. A. Thus, there is scope to believe that the accused persons in collusion with each other have procured the coal in illegal process knowing it to be stolen property for continuing their illegal business. They were in conscious possession of the coal knowing it to be blemished. There is no satisfactory evidence that the accused persons had any previous antecedent of habitual receivers or dealers in stolen property.”

23. The Learned Trial Court disbelieved the evidence of the defence witness who was unable to produce the relevant challan book and the alleged Fatick Kundu did not appear to claim the seized coal which was supposed to be the normal conduct of a genuine purchaser having the scope to do so.
24. The onus is primarily on the prosecution to prove its case. PW-2 failed in his duty to examine anybody from Bharat Cooking Coal and Bishnu Vanijya. The genuine documents pertaining to the

truck was submitted on behalf of the appellants which were not challenged to be defective, forged or illegal. The defence witness stated of issuing receipt/cash memo to the purchaser of coal after he purchased the same Bishnu Vanijya, a firm of the Dubra, Purulia. The cash memo was prepared with two carbon copies. The original copy was given to purchaser and first carbon copy of the cash memo was given to the carrier and the second carbon copy was kept with them. The carbon copy of challan memo dated 26.1.1999 marked as Exhibit- A was issued in the name of Fatick Kundu signed by the manager of the firm.

25. During cross-examination the defence witness stated his inability to produce any document to show that Dipak Ghoshal was the manager of the firm. It is possible that the defence witness might have lost the challan book after a lapse of considerable period of time. In spite of receiving the copy of challan from the Court, P.W.2 did not examine the veracity of the same including existence of the proprietorship of the coal traders as well as Fatick Kundu. It cannot be the absolute responsibility of the appellants to prove their innocence in the event of the prosecution to conduct the investigation with due diligence in order to prove the guilt of the appellants. The disputed coal could not be proved to be a stolen property. The prosecution further could not prove that the appellants voluntarily assisted the embezzlement of the coal or concealed it or disposed it of or made away with the same illegally

with an ulterior motive. There was no denial of carriage of the coal and the prosecution could not establish that the appellants had reason to believe the coal to comprise a purloin property. The Learned Trial Court further observed that *“having regard to the facts and circumstances of the case, the evidence of the parties, I find that the prosecution has not been able to prove the charge under Section 413 of the Indian Penal Code, but the prosecution has been able to prove the charge under Section 414 of the Indian Penal Code against both the accused persons. In the present case the accused persons have failed to prove their innocence in any way.”*

26. **Section 413** of the **Indian Penal Code** state as follows:
Habitually dealing in stolen property. – *Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*
27. **Section 414** of the **Indian Penal Code** state as follows: *Assisting in concealment of stolen property.-Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe 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.*
28. The common element comprised in **Section 413 and Section 414 of the Indian Penal Code** is the existence of a stolen property. If the prosecution was unable to prove the charge against the appellant under Section 413 of Indian Penal Code the

same could not be guilty of charges under Section 414 of the Indian Penal Code.

29. ¹It has been observed that in the matter of **Narayan Sao vs The State of Jharkhand dated 15th January, 2020** stated that “in **Miscellaneous Case No. 608 of 2012** by the **Hon’ble Patna High Court**, the scope of **Section 413** as well as **Section 414 of I.P.C.** has been dealt with and the Hon’ble Patna High Court, while considering the requirements of **Section 414 I.P.C.**, has also held that there is requirement under the said Section that there is knowledge or reason to believe that the property is stolen which is subject matter of offence under **Section 414 of Indian Penal Code**. The knowledge means the cognition and it emphasizes that the person dealing with the property recognizes that it is a theft property and the word “reason to believe” means there is existence and presence of circumstances from which it can be inferred that the accused had knowledge of the fact. The word “reason to believe” indicates that the surrounding circumstances and the circumstances of recovery of property, are such that a reasonable man must have felt convinced in his mind in all probabilities that the property with which he was dealing must be a stolen property.”
30. ²It has been observed that in the matter of **Ram Bharosey Versus State in Criminal Revision No. 262 of 1950** decided on January 4, 1952 stated that “neither the thief nor the receiver of the stolen

¹ Criminal Revision No. 912 of 2008 dated 15th January, 2020

² 1952 SCC OnLine All 183 : AIR 1952 All 481 : 1952 Cri LJ 904 in the High Court at Allahabad

properties can come under Section 414. Section 414 aims at bringing within its scope persons who have not been proved to be in possession of the property. The thief naturally is in possession of the property. So is the receiver of the stolen property. But there may be a third category of persons who never get actual custody or possession of the stolen property and yet assist in its disposal. It is to that category of persons that Section 414 of the Penal Code, would be applicable. To illustrate the matter A steals an article. He desires to dispose of it. He meets a person who is a broker to whom he explains that he has stolen property. He never actually hands over the stolen property to the broker. The broker does not get custody or control of that property but he takes steps to bring the thief into contact with the person who will ultimately receive the stolen goods. Such a person would be guilty under Section 414 of the Penal Code. Section 414 clearly applies, as its language shows, to persons-who voluntarily assist in the selling or disposing of or making away with property. Assistance means that there must be a person assisted. Except in the colloquial sense, a man cannot be said to assist himself. There must be another person whom he assists. In this view of the matter, Ram Bharosey clearly could not be said to have assisted in the disposal of the stolen property. What he actually did was that he disposed of the misappropriated property himself.”

31. *We are in respectful agreement with the view in this matter of the Bombay High Court in the case of **Emperor v. Abdul Gani**, 49 Bom. One of the learned Judges constituting the Bench stated that S. 414, no doubt, requires that the accused should have assisted someone else in the disposal of the property and does not cover a case where a person receives and even disposes of the stolen property merely on his own account. The object of S. 414 clearly is to punish a person who assists in the traffic of stolen goods. Section 379, Penal Code, punishes a thief, S. 411, punishes a receiver of stolen property and S. 414 punishes a person who assists in the disposal of stolen property.*
32. ³*It has been observed that in the matter of **Ajendranath Versus State of Madhya Pradesh** in **Criminal Appeal No. 226 of 1960 decided on April 23, 1963** stated that **Section 414 IPC** makes it an offence for a person to assist voluntarily in stealing or disposing of or making away with property which he knows or has reason to believe to be stolen property. It is not necessary for a person to be convicted under **Section 414 IPC** that another person must be traced out and convicted of an offence of committing theft. The prosecution has simply to establish that the property recovered is stolen property and that the appellant provided help in its concealment and disposal.*

³ In the matter of Ajendranath Versus State of Madhya Pradesh in Criminal Appeal No. 226 of 1960 decided on April 23, 1963 ((1964) 3 SCR 289 : AIR 1964 SC 170 : (1964) 1 Cri LJ 129)

33. Under such fact and circumstances of case the prosecution has failed to prove its case beyond reasonable doubt and accordingly Criminal Appeal being no. 579 of 2004 is allowed.
34. Accordingly C.R.A. 579 of 2004 is disposed of.
35. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
36. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)