

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

308

CRR-1312-2007

Date of decision: 28.02.2023

Bhupinder Singh @ Ninda

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gursharan Singh, Advocate as Amicus Curiae
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is challenging the order dated 28.07.2007 passed by learned Additional Sessions Judge, Moga, vide which his conviction and sentence for offence under Section 411 of the IPC by the learned Judicial Magistrate 1st Class, Moga was upheld.

The prosecution case in a nutshell may be noticed as thus. On the basis of a complaint dated 08.05.2002, Assistant Executive Engineer, Punjab State Electricity Board (for short, 'the Board'), Ajitwal got an FIR registered under Sections 379 and 411 of the IPC against unknown persons alleging therein that 4690 meters 20 mm electric wire and 2955 meters 20 mm electric wire of the Board had been stolen from 63 KVA transformers of Niab Singh of Kilti Chahal and Lal Singh of Nawan Chuhan Chak. During investigation, the petitioner was nominated as an accused. The petitioner allegedly suffered a disclosure statement (Ex.PA) in pursuance of which recovery of 130 meters of

electric wire was effected from him vide recovery memo (Ex.PB). The petitioner was challaned and charged for offences under Section 379 and 411 of the IPC. On the basis of the material and other evidence led, the learned Trial Court acquitted the petitioner for commission of offence under Section 379 of the IPC on the ground that the prosecution had failed to prove that the petitioner had committed the theft of the electric wire. However, he was convicted for having received stolen property and sentenced to undergo RI for 06 months under Section 411 of the IPC with fine of ₹ 1,000/- along with a default clause.

Learned Amicus Curiae appearing for the petitioner argued with vehemence that complaint (Ex.PW3/A) was completely silent as to on which date, month and year the alleged theft of electric wire had taken place. It was further submitted that there was material discrepancy in the case of the prosecution in as much as on the one hand it had been alleged that the electric wire was stolen from the area surrounding village Killi Chahal and Nawan Chuhar, however, as per the alleged disclosure statement (Ex.PA) suffered by the petitioner, the wire had been stolen from the area of village Chugawan. It was further urged that no report of any theft of wire from the area of village Chugawan had ever been made by the Board, hence, the recovered wire could not be said to be stolen property of the Board. There was, thus, no cogent evidence on record which could even remotely connect the petitioner with the stolen electric wire, allegedly recovered from him. Learned counsel while drawing the attention of this Court to the evidence led, contended that it was the admitted case of the complainant himself that there was no particular identification mark on

the stolen electric wires which were allegedly recovered from the petitioner and still further on a pointed suggestion put to the complainant during his cross-examination, he admitted that such like electric wires were commonly available in the market. It was urged that in the above background, the Court below had clearly erred in convicting him for an offence under Section 411 of the IPC.

Learned State counsel while opposing the prayer made by the learned Amicus Curiae, submitted that it was pursuant to the disclosure statement suffered by the petitioner/accused, the recovery of electric wires was effected from him. All the material witnesses had supported the case of the prosecution qua the alleged recovery effected from him, hence, the impugned judgment did not warrant any interference and deserved to be upheld.

I have heard learned counsel and perused the relevant material on record..

On a perusal of the evidence led, this Court has no hesitation in holding that there is no evidence much less legal on record to prove the charge under Section 411 of the IPC against the petitioner. It was admitted by the complainant himself that there was no identification mark on the stolen electric wires which in turn could be suggestive of it being stolen property. Still further, the complainant conceded that such like electric wires which were recovered from the petitioner were commonly available in the open market.

The Court below, thus, certainly fell into error by not appreciating evidence in its correct perspective, while convicting the petitioner for offence under Section 411 of the IPC.

CRR-1312-2007

As a sequel to the above, the instant revision petition is allowed. The impugned judgment of conviction and order of sentence are set aside and the petitioner is acquitted of the charges framed against him.

28.02.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No