

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

CRR-1857-2012(O&M)

Date of Decision:-10.10.2023

Shabir Ali & Anr.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Kunal Dawar, Advocate &
Mr. Jagjot Singh, Advocate for the Petitioner.

Mr. Neeraj Poswal, Assistant Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The instant revision petition has been preferred by the petitioners/accused against the judgment dated 04.06.2012 passed by the Additional Sessions Judge, Faridabad vide which the judgment of conviction and order of sentence dated 15.02.2021 and 16.02.2011 passed by Judicial Magistrate Ist Class, Faridabad has been upheld.

2. The present FIR No.121 dated 15.05.2006 under Sections 457 and 380 IPC P.S. Sector 31, Faridabad came to be registered at the instance of one Keshav Dutt son of Brij Kishore Sharma who stated that he was running a small scale industry under the name and style of Papular Metal Udyog in Faridabad where lock parts used to come for job work of Zinc plating. On the night intervening 12/13.05.2006, 651 pieces of Tata Safari Locks, 5580 of Tata Indica Locks and 2625 pieces of Tata 207 Locks were found missing.

During the investigation, the petitioners and their co-accused Naman Khan came to be arrested and after the completion of all formalities the report under Section 173(2) Cr.PC was submitted against the accused. Thereafter they were ordered to be charged under Section 411 IPC.

3. Pursuant to the conclusion of the trial, the accused came to be convicted and sentenced vide judgment judgment of conviction and order of sentence dated 15.02.20211 and 16.02.2011 as under:-

Offence under Sections	Imprisonment
411 IPC	Convicts are sentenced to undergo rigorous imprisonment for a period of two years each and pay a fine of Rs.500/- each. In default of payment of fine convicts shall undergo simple imprisonment for a period of one month each.

5. A criminal appeal was preferred before the Court of Additional Sessions Judge, Faridabad, which came to be dismissed by the said court vide judgment dated 04.06.2012.

6. The present revision petition has been preferred by two of the convicted accused against the aforementioned judgments of conviction whereas co-accused Naman Khan filed revision petition bearing CRR No.1827-2012 which has been withdrawn by his counsel as the petitioner therein has passed away.

7. The Counsel for the petitioners contend that the courts below have erred in convicting them under Section 411 IPC without applying their respective minds to the facts of the case and the evidence on record. A perusal of the cross examination of the PW-1 i.e. the complainant would show that all the proceedings had been conducted at the Police Station or at the DLF chowki, Sector 31, Faridabad where he had put his signatures on the documents. The accused persons had already been arrested and the articles recovered from them. The occurrence had taken place on the night intervening 12/13.05.2006 and the FIR was registered on 15.05.2006 and

this unexplained delay is fatal to the case of the prosecution. No independent witness was joined at the time of recovery. The complainant had also not furnished any proof regarding the ownership of the stolen articles and nor had the police taken any stock register referring to the articles in question. While some of the lock pieces had been recovered, however, fate of the remaining property was not explained which created a doubt in the prosecution case. He, therefore, contends that the present revision petition ought to be allowed and the petitioners be acquitted of the charges framed against them.

8. The Counsel for the State on the other hand submits that the offence has been well proved beyond reasonable doubt. All the relevant witnesses have supported the case of the prosecution in material particulars and therefore the offence had been established beyond reasonable doubt and the present revision petition was liable to be dismissed.

9. I have heard counsel for the parties at length.

10. The recovery of the stolen articles has been duly proved not only by the complainant appearing as PW-1 but also by PW-3 Ram Chander. PW-2 Pardeep Kumar the investigating officer has proved the recovery memos and identification memos. Therefore, the offence under Section 411 IPC has been established beyond reasonable doubt. Feroze Sheikh (petitioner) was on guard duty on the night of the occurrence and has rather failed to explain as to how in his presence the offence had been committed which clearly shows that the offence could not have been committed without his active connivance. As regards the delay in the registration of the FIR it may be pointed out that mere delay in lodging of the FIR would not fatal to the case of the prosecution in every scenario. In the instant case the defence has not been able to explain as to how the prosecution case has been affected

merely by the delay in the registration of the FIR. The identification of the case property has also been established beyond reasonable doubt. PW-1 in his cross examination has clearly stated that he had maintained a stock register and had duly signed the identification memos Ex.PW-1/E to Ex.PW-1/G. Further the complainant’s company was only doing Zinc plating of the locks and it was not a manufacturing unit which could put its own identification mark on the spare parts. Therefore, no benefit can be drawn by the defence from the absence of marks on the case property. Further, merely because no independent witness had been joined at the time of recovery cannot be fatal to the prosecution case. It is the case of the prosecution, that the recovery had taken place on a public highway after the scooter of the accused had been intercepted. Therefore, Section 100 Cr.PC would have no application.

11. In view of the above, I find no reason to interfere with the well-reasoned judgments of both the courts below and, therefore, the present petition stands dismissed.

12. As regards the imposition of sentence, it may be pointed out that the occurrence pertains to the year 2006. More than 17 years have elapsed ever since. Therefore, I deem it appropriate to reduce the substantive sentence of the petitioners to 03 months rigorous imprisonment each but enhance the fine imposed to Rs.25,000/- each out of which Rs.20,000/- each shall be paid to the complainant/his legal heirs. The sentence in default of payment of fine shall however, remain intact.

(JASJIT SINGH BEDI)
JUDGE

October 10, 2023
Vinay

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