

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.722 of 2019

Arising Out of PS. Case No.-180 Year-1999 Thana- BUXAR MUFFSIL District- Buxar

Mukul Singh, Son of Mahendra Singh, Resident of Village- Majharia, P.S.-
Buxar (Indus), District- Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the Respondent/s : Mr. Rana Randhir Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 20-02-2024

1. The instant Revision is directed against the judgement and order dated 2nd of May, 2010, passed in Cr. Appeal No. 42 of 2009 by the learned Additional Sessions Judge, 1st Court at Buxar, affirming the judgement and order of conviction and sentence, dated 4th of June, 2009, passed by the learned Sub-Divisional Judicial Magistrate, Buxar in G.R. Case No. 1431 of 1999, convicting the petitioner for the offence punishable under Section 411 of the IPC and sentencing him to undergo rigorous imprisonment for 3 years.

2. Before I deal with the legality, validity and propriety of the order of conviction and sentence affirmed by the Court of Appeal, it is pertinent to state in brief the prosecution case. One Sandeep Malhotra made a written



complaint to the Police that on 29th of November, 1999, one Ajay Rai, a resident of Buxar was appointed as the Manager of the Transport Business of the informant situated in Delhi under the name and style of Rath Roadways. The informant claimed himself to be the proprietor of the said transport business. As the Manager of the said business, Ajay Rai booked a Truck vide Reg. No. DL-14A 1699 and loaded the truck with grocery goods, electrical goods, Iron materials, electrical Bulbs, Readymade Cloths, Containers of Ghee, etc., on 18th of November, 1999 to deliver the said goods in Kolkata. However, the said Truck did not reach its destination. The Truck owner Balvinder Singh told that Ajay Rai and his associates asked him to unload the goods at Buxar Chorasta. Then the informant came to Buxar and lodged FIR vide Buxar (Muffasil) P.S Case No. 180 of 1999 for offence under Sections 409 and 120A of the IPC against three accused persons, namely, Ajay Rai, Vinay Rai and Sadanand Rai. On the basis of the said complaint, Police registered Buxar (Muffasil) P.S Case No. 180 of 1999 and took up the case for investigation. During investigation, it was ascertained that Ajay Rai unloaded the said truck at a place near Buxar though the consignment was booked for delivery at 33, Ramlal Mukharjee Lane, P.S. Golabari, Howrah, West Bengal. It



was ascertained that 175 cartoons of EverReady lantern, 36 cartoons of electric Iron, 50 cartoons of bulb, 100 tin Milkfood Desi Ghee, 17 bundle hosiery and 10 cartoon cosmetics were taken away by the above-named three accused persons.

3. On the basis of the charge-sheet filed by the Investigating Officer, the Chief Judicial Magistrate took cognizance of offence and the Judicial Magistrate, 1st Class, Buxar framed charge against the accused persons under Section 409 read with Sections 120B, 411, 467, 468, 469 and 472 of the IPC. On completion of investigation, the learned Judicial Magistrate found accused Mukul Singh guilty for committing offence under Section 411 IPC and the accused was convicted and sentenced to undergo rigorous imprisonment for 3 years for the charge under Section 411 IPC.

4. Both the Courts below on appreciation of evidence on record, concurrently found that the accused/petitioner had committed an offence under Section 411 IPC. It is for this Court to adjudicate as to whether there is any illegality or material irregularity in the impugned order which would require reversal of the order of conviction and sentence.

5. The penal Section 411 IPC can be broken down into four segments, namely: Whoever, (i) dishonestly; (ii)



receives or retains any stolen property; (iii) knowing; or (iv) 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. Section 24 IPC states that a person does a thing dishonestly who does it with the intention of causing wrongful gain or wrongful loss. It is not necessary that there should be an intention to cause both. On the analogy of this definition, it might be said that either an intention to secure a benefit or advantage on the one hand, or to cause loss or detriment on the other, by means of deceit is an intent to act dishonestly. In order to bring home the guilt under Section 411 IPC, the prosecution must prove:

(i) that the stolen property was in the possession of the accused;

(ii) that some person other than the accused had possession of the property before the accused got possession of it; and

(iii) that the accused had knowledge that the property was stolen property.

6. In the case at hand, it has been proved beyond any shadow of doubt that the property which was recovered from the possession of the petitioner did not belong to him. The stolen



property was received by the petitioner and during investigation the said properties were seized from different places including the shop of the petitioner. List of seizure list marked Exhibit 5,5/1, 5/2 and 6 and seizure list marked Exhibit 7 mentioned the items recovered from *Kanchan Electric* which were stolen articles. Test Identification Parade of stolen properties was conducted and the informant identified the seized articles as the consignments booked with this transport company.

7. In case of *Vimla (Dr) v. Delhi Admn.*, reported in *[1963 Supp (2) SCR 585]* the expression "defraud" has been explained in the following words:-

“where it involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation etc,. The informant obviously suffered injury by being deprived of his own movable goods and is being deceived by his Manager and thus being defrauded.”

8. From the judgement the Trial Court as well as the Court of Appeal, it is found that the both the Courts below considered the evidence on record at length and found the



accused guilty of offence under Section 411 of the IPC and convicted and sentenced him accordingly.

9. I do not find any illegality or impropriety in the impugned orders.

10. Accordingly, the instant Revision is dismissed on contest.

11. Let the case diary be returned to the learned Public Prosecutor In-Charge.

12. Let a copy of this order be sent down to the Court below for information.

13. The petitioner is directed to surrender before the Trial Court to serve sentence.

(Bibek Chaudhuri, J)

uttam/skm/-

AFR/NAFR	NAFR
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