

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-651-DBA-2004 (O&M)
Reserved on: 10.09.2024
Date of Decision: 18.09.2024

State of PunjabAppellant

Versus

Sukhwinder SinghRespondent

2. CRR-2418-2003

Sham LalPetitioner

Versus

The State of PunjabRespondent

3. CRR-2306-2003 (O&M)

Constable Yadwinder SinghPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. Vinod Ghai, Sr. Advocate assisted by
Mr. Arnav Ghai, Advocate and
Ms. Kashish Sahni, Advocate
for the appellant (in CRA-S-852-SB-2001)
for the petitioner in CRR-2418-2003.

Mr. Pawan Kumar, Sr. Advocate assisted by
Ms. Vidushi Kumar, Advocate and
Ms. Parul Dhingra, Advocate
for the petitioner in CRR-2306-2003.

SURESHWAR THAKUR, J.

1. Since both the above revisions (supra) as well as the criminal appeal (supra) arise from a common verdict, made by the learned trial Judge concerned, hence all the appeal/revisions (supra) are amenable for a common verdict being made thereons.

2. All the appeal/revisions (supra) are directed against the impugned verdict, as made on 03.11.2003, respectively upon Criminal Appeal No.6 of 22.03.2002, upon Criminal Appeal No.9 of 12.4.2002 and upon Criminal Appeal No.24 of 12.4.2002, wherethroughs the appeal of one Sukhwinder Singh became accepted and accordingly he was acquitted of the charges offences, whereas, the appeal filed by accused Yadwinder Singh and Sham Lal against the verdict of conviction recorded by JMIC, Ludhiana, became upheld. The learned trial Judge concerned (JMIC, Ludhiana), sentenced the convicts in the hereinafter extracted manner.

“ACCUSED YADVINDER SINGH IS TO UNDERGO

i) RI for a period of three years and to pay fine of Rs. 1000/-. In default of payment of fine he shall further undergo RI for a period of Six months for having committed offence U/s 120/B IPC.

ii) RI for a period of three years and to pay fine of Rs. 1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence U/s 467 IPC.

iii) RI for a period of two years and to pay fine of Rs.800/-. In default of payment of fine he shall further undergo RI for a period of three months for having committed offence U/s 468 IPC.

(iv) RI for a period of one year and to pay fine of Rs.500/- In default of payment of fine he shall further undergo RI for a period of one month for having committed offence U/s 471 IPC read with Section 120-B IPC.

(v) RI for a period of 3 years and to pay fine of Rs. 1000/- in default of payment of fine he shall further undergo RI for a period of six months for having committed offence U/s 467 IPC read with Section

120-B IPC.

ACCUSED SHAM LAL IS TO UNDERGO

i) RI for a period of three years and to pay fine of Rs. 1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence U/s 120/B IPC.

ii) RI for a period of three years and to pay fine of Rs. 1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence U/s 467 IPC read with section 120/B IPC;

iii) RI for a period of two years and to pay fine of Rs.800/-. In default of payment of fine he shall further undergo RI for a period of three months for having committed offence U/s 468 IPC read with section 120 B IPC;

iv) RI for a period of one year and to pay fine of Rs.500/-. In default of payment of fine he shall further undergo RI for a period of one month for having committed offence U/s 471 IPC read with section 120 B IPC.

v) RI for a period of three years and to pay fine of Rs.1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence U/s 467 IPC.

vi) RI for a period of two years and to pay fine of Rs.800/-. In default of payment of fine he shall further undergo RI for a period of three months for having committed offence U/s 420 IPC.

ACCUSED SUKHWINDER SINGH IS TO UNDERGO

i) RI for a period of three years and to pay fine of Rs.1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence u/s 120/B IPC.

ii) RI for a period of two years and to pay fine of Rs.800/-. In default of payment of fine he shall further undergo RI for a period of three months for having committed offence U/s 468 IPC read with Section 120/B IPC.

iii) RI for a period of three years and to pay fine of Rs.1000/-. In default of payment of fine he shall further undergo RI for a period of six months for having committed offence u/s 467 IPC read with Section 120/B IPC

iv) RI for a period of one year and to pay fine of Rs.500/-. In default of payment of fine he shall further undergo RI for a period of one month for having committed offence U/s 471 IPC.”

3. Since the accused-convict became aggrieved from the above drawn concurrent verdict of conviction, besides also, became aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon accused Yadwinder Singh and accused Sham Lal, by the learned convicting Court concerned, thereupons they choose to institute thereagainst their respective criminal revisions respectively bearing No.CRR-2418-2003 and CRR-2306-2003.

4. The State of Punjab has also filed criminal appeal bearing No.CRA-D-651-DBA-2004 thus, seeking the quashing of the impugned order dated 03.11.2003 passed by Addl. Sessions Judge, Ludhiana, whereby accused Sukhwinder Singh has been acquitted of the charged offences, besides seek the upholding of the judgment of conviction recorded by JMJC, Ludhiana.

Factual Background

5. The genesis of the prosecution case is that accused Sham Lal on 16.01.1995 moved an application for releasing the impounded truck on sapurdari, thus before the Court of Sub-Divisional Judicial Magistrate, Jagraon. On 18.01.1995 on the basis of order of the Court, Sham Lal took the impounded truck on sapurdari. The investigating officer found the documents of the file to be false and fabricated. He moved the Court of the learned Sub Divisional Judicial Magistrate, Jagraon to cancel the sapurdari. The sapurdari order was cancelled. The truck was taken into possession by the police on 01.2.1995. ASI Jasmer Singh, during investigation approached DTO Jind, Haryana to verify the ownership of truck in question. As per record of DTO Jind, the owner of the truck No.HR-31-5287 was one Balwan Singh s/o Jula Singh resident of Allwa Distt. Jind, Haryana. His truck had

engine No.692 DO-1580300 Chassis No.364073-576182 Model I, 1992. The truck was taken into possession in Police Station, Raikot, had a different Engine and Chassis Numbers i.e. 692-DOZ-175235 and 34405216-7427 respectively. The truck in question was found to have been stolen by the accused. All the accused persons in connivance with each other induced the Court of the Sub-Divisional Judicial Magistrate, Jagraon to release the truck on sapurdari on the basis of forged and fabricated documents having been prepared by the accused persons with their, fraudulent intention to get the truck on sapurdari knowingly very well that they were not owners of the truck rather the truck was stolen property. Accused Sukhwinder Singh was arrested on 8.2.1995. The specimen signatures of accused Sukhwinder Singh, and Sham Lal were taken and those were sent to Forensic Science Laboratory, Chandigarh. The standard and specimen signatures have been opined to be of the same persons which have been signed by accused persons on the documents, on file, on the basis of which they committed forgery and had fraudulently taken truck on sapurdari. Handwriting of Yadwinder Singh was also taken and his signature was compared with the certificate and these were opined to be in his hand.

6. During investigation, it was found that truck No.HR-31-5287 bore old No.RJ-13J-1201, and the Truck No.HR-31-5287 with Chassis Number, during investigation was found bearing different registration number i.e. DEG 5005 owned by Smt. Amma wife of Bhim Sain Dhir, resident of 237, Kamla Market, Delhi. Smt. Amma made statement she never purchased or sold such like truck. From Police Station, Kotwali, Barnala, FIR No.168/94 it was found by investigating officer that this is a case of accident of one Ambassador Car No.PBN-9998 in which a boy

rumbled to the injuries. That the said case has no connection with truck No.HR-31-5287 or with accused Sham Lal. After completion of the investigation challan against the accused was present in the Court under Sections 420/411/467/468/471/120-B IPC.

7. In FIR bearing No.9 dated 14.01.1995, registered under Section 279, 427, 337 IPC, the instant offending vehicle was impounded. Moreover, though in the application filed under Section 451 Cr.P.C., by the applicant, he claimed the release of the relevant truck, but in the said application he made a reference to FIR No.168/1994, registered under Sections 279, 337, 304-A of the IPC, wherein, rather the offending vehicle was an Ambassador car. Moreover, through a report in the said claimed regard becoming made, whereby the learned trial Judge concerned, ordered for the release on Sapurdari of the relevant truck to the applicant.

8. The said release order dated 18.01.1995, passed by SDJM, Jagraon, on 18.01.1995, was based on a chit (Ex.PW9/A), contents whereof become extracted hereinafter.

“Certified that the documents RC, Permit, and Receipt of truck bearing No.HR/31/5287 are in the name of owner Sham Lal s/o Kishori Lal r/o Barnala in Case NO.9/94 U/s 279/337/338 IPC PS Kotwali Barnala.

Xxx

*Attested Karmit Singh ASI
PS Raikot 16.1.95”*

9. It appears that through a mis-recital qua the FIR, relevant to the apposite application, thus occurring therein that whereby the relevant truck became released on Sapurdari to the applicant. However, the said purported mis-reference did not result in the release of the Ambassador car, involved in FIR No.168/94. As such, there was no prejudice or loss of property qua the

the lawful owner thereof.

10. Though the release order (supra) did thereby cause release on Sapurdari of the truck to the applicant, but it was yet contended on the above purported mis-recital of the FIR apposite to the impounded truck, besides on a purported mis-reference made in the chit (supra), drawn by ASI Karmit Singh, besides with therein a declaration occurring that the applicant was the RC holder of the vehicle concerned, that thereby the investigating officer concerned, became constrained to, through an application appended as PW20/E, seek the cancellation of the order, whereby the offending truck was ordered to be released on Sapurdari.

11. Be that as it may, though on the said application an order is stated to have been rendered on 01.02.1995, by the SDJM, Jagraon. However, a thorough searching of the entire record, did not result in the said order becoming unearthed. Consequently, it appears that the order passed on 18.01.1995 by the learned SDJM, Jagraon, whereby the offending truck was ordered to be released to the applicant concerned, did become the valid anchor, for the applicant thus *prima facie* becoming the well recipient of the truck which was released on Sapurdari to him. Moreover, thereby there was no occasion as such for the investigating officer concerned, to draw investigations based upon the purported mis-recital (supra) or upon the RC being not in the name of the applicant, nor there was any occasion for the investigating officer concerned to, on the basis of a mis-recital occurring in the relevant chit, thus initiate criminal action against the concerned.

12. If the said order acquired binding and conclusive effect, and, attained finality, its validity could have been tested only through an order rescinding the same becoming passed either by Appellate or by the

Revisional Court. However, it appears that though for all the above stated reasons, the order of release on Sapurdari of the offending truck neither became rescinded nor it became set aside either by the Appellate or by the Revisional Court, as such it acquired conclusivity. Even if assumingly the said order cancelling the order (supra), causing release on Sapurdari of the offending truck vis-a-vis the applicant, thus was made, which however does not exist on record, yet the review of the said order was barred in view of the provisions borne Section 362 of Cr.P.C., provisions whereof becomes extracted hereinafter. Reiteratedly the remedy for testing the validity of the said order was only either by the learned Appellate or by the Revisional authority.

“362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

13. The investigation as launched by the investigating officer concerned, based upon the purported mis-recital in the chit (supra), was yet required to unearth but irrespective of the RC not recording the name of the applicant *qua* whether after receiving the sale consideration in respect thereof, on an apposite oral sale becoming made to the applicant, thus the RC owner handing over physical possession of the offending to the applicant. However, the investigating officer concerned, found that one Balwant Singh was the purported owner of the offending vehicle, but on a reading of the RC issued *qua* Balwan Singh, it becomes unraveled, that the Chassis number and Engine number reflected therein, did not bear synchronicity with the Chassis number and Engine number of the instant truck. Contrarily, the owner of the offending vehicle was one Aasha Kapoor,

who however was unable to speak whereupon her son stated that his ailing mother neither purchased the truck nor had alienated the said in favour of the applicant.

14. Nonetheless, the said statement is of no worthwhile effect as the official from the District Transport Office produced the RC of the offending truck, wherein, one Aasha Kapoor was echoed to be the apposite owner. Therefore, the said made statement by the son of Aasha Kapoor loses its veracity.

15. Moreover, since even if the applicant was unable to produce on record any document to suggest, that on payment of consideration qua the lawful owner i.e. Aasha Kapoor, she had alienated the truck in favour of the applicant, who rather took the offending vehicle on Sapurdari, yet unless the lawful owner (supra) had filed an FIR to the effect that the truck had been stolen, thereby alone it would be assuredly stated that the applicant had unlawfully acquired possession of the offending truck. However, the lawful owner did not evidently institute an FIR relating to the fact that the offending truck became stolen, thereby since the offending truck was not stolen, as such, given the disability of the owner to state that she had under an oral agreement received sale consideration, which however may not find reflection in the bank account concerned, thereby *prima facie* the applicant rather did assume the lawful physical possession over the vehicle, irrespective of the apposite RC not recording the fact of his owning the vehicle, may be because the applicant did not move any application for the transfer of his name in the RC before the District Transport Office concerned. Conspicuously, the (supra) trite factum, has never become considered nor became adjudicated upon, thereby for want of consideration

being made to the above trite factum, besides also for no effective adjudication becoming made thereon. Resultantly, thereby the impugned verdict appears to be made without the deepest application of mind vis-a-vis the trite factum (supra).

16. Reiteratedly, the sequel of the above, especially when the lawful owner became disabled to speak, is that, the acquisition of possession over the instant truck by the applicant was not made illegally nor did the applicant, through causing theft of the offending truck, thus assume possession thereovers. Therefore, it appears that after an oral sale of the truck taking place and after his assumingly handing over sale consideration in respect thereof to the owner, that he assumed possession.

17. The effect of the above, is that, there was strikingly mis-conclusions made by the investigating officer concerned, that the truck was stolen, besides it appears that the said mis-conclusions were also made, merely on the basis of purported mis-recitals both in the application and in the recitals in the application (supra), about the FIR number in respect whereof the truck was released on Sapurdari.

18. Furthermore, there is no consequentiality as such to the opinion of the handwriting expert, wherein, he discloses that after making comparisons of the disputed signatures, with the specimen signatures, his concluding that both belonging to the accused concerned.

FINAL ORDER

CRR-2306-2003 and CRR-2418-2003

19. The result of the above discussion, is that, this Court finds merit in both the revision (supra), and, is constrained to allow the apposite revisions. Consequently, the revisions are allowed. The impugned

concurrent judgments convicting, and, sentencing the petitioners, and, as become recorded by the learned trial Judge concerned, as well as by the learned Appellate Court, are quashed, and, set aside. The petitioners is acquitted of the charge framed against them. The fine amount, if any, deposited by them, be, in accordance with law, refunded to them. The personal, and, surety bonds of the accused shall stand forthwith cancelled, and, discharged. The petitioners, if in custody, and, if not required in any other case, be forthwith set at liberty. Release warrants be prepared accordingly.

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20. There is no merit in the instant appeal, and, the same is dismissed. The impugned judgment of 03.11.2003, passed by the learned Addl. Sessions Judge, Ludhiana acquitting the respondent-Sukhwinder Singh, after setting aside the judgment of conviction and the consequent thereto sentence of imprisonment passed by JMIC, Ludhiana, is maintained and upheld.

21. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

22. Records be sent down forthwith.

23. Miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

18.09.2024

Ithlesh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No