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IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved on: 13th December, 2023****Date of decision: 23rd February, 2024**

+ CRL.A. 47/2018

MOHIT

..... Appellant

Through: Mr. Pradeep D., Advocate.

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Mr. Aman Usman, APP for the State
with SI Kavish, P.S. Inderpuri.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') challenges the judgment of conviction and order of sentence dated 22.02.2017 and 28.03.2017, respectively passed by the learned Additional Sessions Judge – 03, Patiala House Courts, New Delhi in Sessions Case No. 118/2015 arising out of FIR No. 228/2015 under Sections 395/34/412 of the Indian Penal Code, 1860 ('IPC') registered at PS Inderpuri. The appellant has been convicted for offence under Section 411 of IPC and sentenced to the period already undergone in custody alongwith a fine of Rs. 500/-.



Background

2. Briefly stated, the facts of the present case, as stated in the impugned judgment, are as under:

- i. On the intervening night of 19/20.08.2015, at about 11:00 PM, Anand Kumar, i.e., the complainant (PW-2) and his co-worker Rajesh were waiting in their respective Eco Vans to unload a truck at Village Dasghara, near Todapur Red light, Delhi.
- ii. At that time, accused persons, including the appellant, came near them from the side and started beating them. In doing so, they snatched at the mobile phone and purse of the complainant Anand Kumar (PW-2) containing his driving license, PAN Card, Aadhar Card and Rs. 2470/- in cash. They also broke the left side mirror of the Eco Van and ran away.
- iii. The present FIR was registered at the instance of Anand Kumar (PW-2) under Sections 395/34 of the IPC.
- iv. The accused persons were apprehended. Rs. 2470/- were recovered from the possession of the appellant *vide* seizure memo Ex. PW-8/I. The Eco Van was also seized *vide* seizure memo Ex. PW-2/F.
- v. Upon completion of investigation, chargesheet was filed under Section 395 of the IPC.
- vi. *Vide* order dated 04.12.2015, the learned ASJ framed charges *qua* the appellant for offences under Sections 395/34 and 412 of the IPC.
- vii. After examining the evidence led by the accused persons as well as the State and after considering their rival contentions, the learned ASJ



passed the impugned judgment whereby the accused persons including the appellant were acquitted of offence under Sections 395/34 and 412 of the IPC whilst the latter, i.e., appellant was convicted for offence under Section 411 of the IPC.

3. While convicting the appellant under Section 411 of IPC, the learned ASJ observed and held as under:

“23. However, as per seizure Memo Ex-PW8/1 i.e. of currency notes, have been shown as recovered from accused Mohit. Accused Mohit has failed to give any satisfactory reply u/s 313 Cr.P.C. with regard to the recovery of the said currency notes from him. Besides, he has also failed to lead any defence evidence in this regard. Therefore, it can easily be inferred that he dishonestly received or retained the stolen property, knowing or having reason to believe the same to be stolen property. Therefore, in light of these facts and circumstances of the case, I am of the view that prosecution has successfully proved its case beyond reasonable doubt for the offence u/s **411 IPC** against accused Mohit **instead of section 412 IPC** precisely for the reasons that 5th accused in this case has not been arrested and essential ingredients for the offence u/s 412 IPC the company of 05 or more persons is necessary. Accordingly accused persons namely 1-Mohit, 2. Ajit, 3. Manish, 4. Prakash are acquitted for the offence u/s 395/ 34 IPC and 412 IPC; and Accused Mohit is convicted for the offence u/s 411 IPC.”

Submissions on behalf of the Appellant/Mohit

4. Learned counsel appearing on behalf of the appellant submitted that the latter has been convicted for offence under Section 411 of the IPC, i.e., for ‘dishonestly receiving stolen property’, on the ground that he failed to give



any reasonable explanation in relation to the possession of the currency notes recovered from him. It was submitted that the burden was on the prosecution to prove that the alleged looted amount of Rs. 2,470/- was recovered from the appellant. It was submitted that the learned ASJ has not appreciated that prosecution failed to link the recovery of amount from appellant with the money allegedly contained in the purse snatched away from the complainant; as while recovering the amount from the accused, as per the seizure memo (Ex-PW-8/I), no denomination of the currency notes were recorded, nor any serial number finds any mention in the said seizure memo.

5. Learned counsel appearing on behalf of the appellant further submitted that the learned ASJ has also not considered the testimony of Naval Kishore (PW-8), who deposed that no money was recovered from personal search of accused Mohit. It was further deposed that he did not remember when the recovery of looted amount was effected from the appellant.

6. Learned counsel for the appellant submitted that onus was on the prosecution to demonstrate that the property stolen must have been acquired by theft or criminal misappropriation or other offences akin to them. In order to prove commission of offence under Section 411 of the IPC, it was necessary to prove all ingredients in order to establish that the property was stolen. In the absence of offence of theft, it was submitted that no offence under Section 411 of the IPC would be made out. In support of the said contention, reliance was placed on the following judgments:

- i. Chandamal & Ors. v. State of Rajasthan, AIR 1976 SC 917.
- ii. Ashok Kumar v. The State, 1994 (30) DRJ 555.



7. Lastly it was submitted that the alleged recovered money was neither produced in Court during the course of evidence nor has the complainant given any statement asserting that the currency notes in questions were those contained in his purse. Therefore, it was submitted that there is no recovery in the eyes of law. In support of the said contention, reliance was placed on the following judgments:

- i. State v. Sunil Kumar @ Sagar @ Rahul & Ors., 2015 (2) JCC 802.
- ii. Gomati @ Manoj v. State (Govt. of NCT) of Delhi, 2012 III AD (Delhi) 612.
- iii. State v. Salim @ Anwar, 2013 (4) JCC 2711.

Submissions on behalf of the State

8. Learned APP for the State submitted that most material witnesses in this case are the victims, i.e., Anand Kumar (PW-2) and Rajesh Yadav (PW-4) and they have fully supported the case of the prosecution. It was submitted that the currency notes recovered from the appellant totalled to the exact sum of money in the purse allegedly snatched away from the complainant, and that could hardly be a coincidence. On these grounds, it was submitted that the prosecution has proved its case beyond reasonable doubt against the appellant for commission of offence under Section 411 of the IPC.

9. Learned APP for the State relied on a judgment of Hon'ble Allahabad High Court in Rajjaua v. The State, AIR 1959 ALL 718 to demonstrate that since the appellant was found in possession of the currency notes, it would be inferred that he dishonestly received and retained stolen property, owing or having reason to believe the same in possession. It is submitted that in view of



the above, the learned Trial Court rightly convicted the present appellant under Section 411 of the IPC.

Analysis and Findings

10. The case of the prosecution in the trial was that on the intervening night of 19/20.08.2015 at about 11:00 PM, the accused persons including the present appellant came near them and started beating them. Further the case of the prosecution is that in the said process, the accused persons snatched away the mobile phone and purse of the complainant containing Driving License, PAN Card, Aadhar Card and Rs. 2470/- in cash. It is the case of the prosecution that from the present appellant, the aforesaid amount of Rs. 2470/- was recovered *vide* seizure memo exhibited as PW-8/I.

11. The learned Trial Court while acquitting the accused persons including the present appellant under section 395/34 and 412 of IPC observed and held as under:

“22. I have given careful consideration to the submissions of Id. Counsel for the accused persons and Id. APP as well. Having gone through the whole case file it has come on record that as per prosecution story there were 05 accused persons namely 1. Mohit, 2.Ajit, 3.Manish, 4. Prakash and 5. Dabbu @ Kaley. But it is very surprised to note that accused no.5 Dabbu @ Kaley has not been arrested in this case so far. Case pertains to the year 2015. Moreover, PW7 Dharminder was the most important witness (Key witness) in this case, who could have established the identity of the alleged accused persons, however PW7 Dharminder has turned hostile and did not support the prosecution case on any count. Prosecution has tried to prove that the side mirror of the said Maruti Van Eco Vehicle was broken by one of the accused persons; however there is neither any



photograph to show the alleged fact, nor seizure of the broken side mirror of the Maruti Van Eco Vehicle was prepared. Therefore, testimonies of **PW2 Anand Kumar** and **PW4 Rajesh Yadav** remains uncorroborated by any of the public witness. Besides, fifth accused Dabbu @ Kaley has neither been arrested nor any proceeding with regard to declare him PO etc. has been brought on record. Therefore, in light of the above discussed facts and circumstances of the case and non corroboration of testimonies of PW2 Anand Kumar and PW4 Rajesh Yadav from any independent witness, the conviction of accused persons impacts the fairness of the case as no proceedings against alleged 5th accused Dabby @ Kaley has been brought on record either in the form of declaring him proclaimed offender or any supplementary challan has been filed against him. The essential ingredients for the offence u/s 395/34 IPC and 412 IPC the company of 05 or more persons is necessary. Hence, prosecution has miserably failed to prove its case beyond reasonable doubt against accused persons for the offences u/s 395/34 IPC and 412 IPC. ”

12. The learned Trial Court disbelieved the case of the prosecution with respect to the commission of said offences by observing that PW-7 Dharmender Kumar, the most important witness (key witness) could not establish the identity of the alleged accused persons. In the aforementioned scenario, since the commission of the offence of dacoity under Section 395 of IPC could not be proved, the learned Trial Court rightly acquitted the accused(s) including present appellant under section 412 of the IPC. The learned Trial Court, however, proceeded to convict the present appellant under Section 411 of the IPC, which provides as under:



“411. Whoever dishonestly receives or retains any **stolen property**, knowing or 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.”

The stolen property has been defined under Section 410 of the IPC, which provides as under:

“410. Stolen property.— Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “**stolen property**”, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.”

13. A bare perusal of the aforesaid provisions shows that the essential ingredient for the offence under Section 411 of the IPC is that the property alleged to be in possession of an accused has to be transferred by way of theft or extortion or robbery or offences akin to them as provided in Section 410 of the IPC.

14. The learned Trial Court in the impugned judgment after observing the fact that the identity of the accused had not been established, did not state any finding to the effect that such offences as provided for under Section 410 of the IPC were committed by any person. There was no finding given by the learned Trial Court to the effect to that the property as allegedly recovered



from the present appellant was “*transferred by theft or by extortion or by robbery*”. The remaining inference drawn by the learned Trial Court is on the basis of alleged seizure memo dated Ex. PW-8/I which is with regard to the recovery of the alleged money from the present appellant.

15. The learned counsel for the appellant rightly pointed out that the said recovery was not made in the presence of any public witnesses and it has been further stated that the details of the currency i.e. the denomination or the description has not been provided in the seizure memo exhibited as Ex. PW-8/I. A perusal of the records reflects that certain judgments were cited on this issue but the same were not considered by the learned Trial Court. For the purpose of illustration, one of the judgments cited before the learned Trial Court by the counsel for the appellant was of a single judge-bench of this Court in **State vs. Sunil Kumar @Sagar @ Rahul & Ors. 2015 (2) JCC 802**, paragraph 15 of which reads as under:

“15. In addition to that the car is shown to have cash of Rs 10 lacs in its rear hood **but denomination of currency notes has neither been mentioned in the seizure memo (Ex.PW8/A) nor in the Rukka (Ex.PW11/E).** Also the seizure memo of alleged Rs 7.40 lacs recovered from the pointing out of accused Desh Raj on 18.08.2008 vide memo *Ex PW3/A* **does not contain any denomination of currency notes. Hence there is absolutely no evidence to show the source of the said money or its connection with the other alleged criminal offences.**”

16. The learned Trial Court did not consider this issue which is significant as the case of the prosecution with regard to commission of offence u/s 395 IPC has been disbelieved by the learned Trial Court itself.



17. In view of the above, the appeal is allowed. The judgment of conviction dated 22.02.2017 passed by the learned Additional Sessions Judge – 03, Patiala House Courts, New Delhi in Sessions Case No. 118/2015, is set aside.

18. The order on sentence reflects that the appellant has already undergone the sentence, and therefore, the appeal with respect to the order on sentence has become infructuous and the judgment on conviction is set aside.

19. Order be communicated to the concerned Jail Superintendent for necessary action and compliance.

AMIT SHARMA
JUDGE

FEBRUARY 23, 2024/sn