

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

CRA 21 Of 2005

Sisir Bauri

-Versus-

The State of West Bengal

For the Appellant : **Mr. Soumik Ganguli,
Ms. Chandana Chakraborty.**

For the State : **Ms. Baisali Basu, Ld, Jt. G.P.
Ms. Nandini chatterjee.**

Hearing concluded on : **17.06.2025**

Delivered on : **19.06.2025**

Prasenjit Biswas, J:-

1. The appeal is directed at the behest of the appellant challenging the impugned judgment and order dated 10.12.2004 passed by the learned Sessions Judge, Bankura in connection with Sessions Case No. 13(4)03 and Sessions Trial No. 6(6)03.

2. By passing the impugned judgment and order this appellant is found guilty for commission of offence punishable under Section 414 of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for six months.

3. Being aggrieved and dissatisfied with the said impugned judgment and order of conviction the present appeal is filed on behalf of the appellants.

4. The case of the prosecution in nutshell is that:-

“A suomoto complaint was lodged by Saroj Hazra, S.I. of police and O.C. Chatna P.S. stating that on 18.01.1999 at about 19:35 hours he along with force conducted a raid at Chatna to Saltore Pitched Road, Ethani village against illegal transportation of coal and found a truck bearing no. WGW-1813 loaded with goods which was coming from Saltore side. This defacto complainant signaled to stop the said vehicle. The vehicle was stopped by the driver and he found that the truck was loaded with coal weighting approx 10 M.T. On demand the driver of the truck failed to produce any valid document in support of carrying coals on the truck. On interrogation the driver disclosed his name and address as Sisir Bauri who is the appellant in this case.”

5. Over the complaint lodged by the defacto complainant a case being no. 7/99 dated 18.01.1999 was started by the concerned police station. After completion of investigation charge sheet was submitted by the prosecuting agency against this accused and the other accused Dulal Mukherjee under Sections 379,411,413,414 of I.P.C. and 34 of the Mines and Minerals Act.

6. The charge was framed by the Trial Court under Section 413/414 of IPC and Section 34 of the M.M. Act which was read over and explained to the accused persons and they pleaded not guilty and claimed to be tried. During pendency of

the case before the Trial Court the accused Dulal Mukherjee died and the case stood abated against him.

7. In this case 5 witnesses were examined on behalf of the prosecution and documents were marked as exhibits on its behalf.

8. The defence has examined one witness as DW1 in this case in support of his plea.

9. Mr. Soumik Ganguli, learned Advocate appearing on behalf of the appellant/convict submits that there are apparent mistakes and omissions in the statements of the witnesses made before the Trial Court. It is further said by the learned Advocate that the prosecution has miserably failed to prove that the seized coal was actually stolen property. The order of conviction and sentence awarded by the learned Trial Court under Section 414 of IPC suffers from several illegalities. It is said by the learned Advocate that there is nothing in the evidences of the witnesses for which it can be said that this appellant has extended his hand in order to help the owner of the truck for fruitful gain.

10. Lastly, it is said by Mr. Ganguly that the prosecution has hopelessly failed to prove beyond all reasonable shadow of doubt that the seized property was stolen in nature and as such the impugned judgment and order of conviction is otherwise bad in law and is liable to be set aside.

11. Ms. Baisali Basu, learned Advocate. appearing on behalf of the State submitted that there is no infirmity or illegality in the impugned judgment and order of conviction passed by the learned Trial Court. It is said by the learned Advocate that all the witnesses corroborated the contentions as made in the written complaint and moreover from the seizure list it would be appearing

regarding involvement of this appellant with the case. As per submission of the learned Advocate there is nothing in the record for which the impugned judgment and order of conviction may be interfered with. At the time of hearing learned Advocate draws attention of this court to the depositions of prosecution witnesses and said that those prosecution witnesses have clearly supported the story of the prosecution. So, it is prayed by the learned Advocate that the present appeal filed on behalf of the appellant may be rejected outright.

12. I have considered the rival submissions advanced by both the parties and have gone through all the materials connected with this case.

13. PW1 Saroj Hazra, S.I. of police who lodged the complaint deposed before the Court supporting the contentions made in the written complaint. It is said by this PW1 that on the relevant date and time he intercepted the vehicle which was carrying coal and asked the driver to produce the papers regarding coal but he failed to produce any paper in respect of that coal. It is said by this witness that he seized the coal and the truck under preparation of seizure list and took signatures of the witnesses on that seizure list. Thereafter, this PW1 lodged complaint before the police station and on basis of that complaint the case was started. But in cross examination this witness stated that there was no complaint against the accused or against the vehicle regarding theft of coal and there was no allegations from any authority regarding theft of coal. On cross examination this PW1 further said that he lodged complaint on the ground that the coal may be stolen. So, this witness was not sure whether the article seized was stolen property or not.

14. PW3, Sri. Guiram Ghosh, S.I. of police who submitted charge sheet against the accused persons. This witness stated on cross examination that during period of investigation nobody reported him regarding the theft of such coal and he tried his level best to find out clue. So, this witness stated in the same line of PW1 that he was not sure that the seized coal was stolen property or not.

15. PW4 Kishore Das, ASI of police and witness to the seizure stated in his evidence that PW1 seized the coal and the truck with the papers under a seizure list and he puts his signature on the said seizure list. PW5 Constable No. 370 Achinta Singha Mahapatra stated that PW1 seized the truck and coal with papers of the vehicles under preparation of seizure list and he puts his signatures on the said seizure list.

16. DW1 Sishir Bauri the driver of the vehicle no. WGW-1813 and the appellant convict of this case stated that the deceased Dulal Mukherjee was the owner of the vehicle and the original challan and the relevant papers of the vehicle were submitted to Chatna P.S. on the date of incident. In cross examination it is said by the witnesses that the seizure list was prepared in the police station and he puts his signature on it. This DW1 further said that the contents of the seizure were not explained to him and on being asked he puts his signature therein.

17. In order to constitute an offence under Section 414 IPC the following ingredients has to be proved by the side of the prosecution i.e. (1) the offender assist in concealing or (2) disposing of or making away with property and (3) the offender must know or has reason to believe that the property is stolen and also (4) his assistance must be voluntary and lastly (5) the property must be proved to be stolen.

18. It is not necessary for a person to be convicted under Section 414, IPC that another person must be traced out and convicted of an offence of committing theft but the prosecution has to prove that property recovered is stolen property and the accused provided help in its concealment and disposal. So, the prosecution has simply to establish that the property recovered is stolen property and the appellant accused provided help in its concealment and disposal. So, the Section 414 IPC deals with the offence of assistance in concealment of stolen property and once prosecution proves regarding the ingredients as referred above or 'reason to believe to be stolen property' the onus shifts upon the defence to prove that the property was genuinely held by him for making a case under Section 414 IPC. One has to read section 410 IPC which is definition Section of section 414 of IPC for that essential ingredient of knowledge of this appellant that such are stolen property is one of the aspect.

19. So far as Section 411 is concerned, the opening words make it abundantly clear that the property in relation to which the offence can be said to be committed must be established to be stolen property. Having deliberately and consciously used the expression "stolen property" in Section 411 and having cast the burden on the prosecution to establish that the property which was received and retained dishonestly was stolen property, the Legislature has made a departure whilst defining the offence of concealing, disposing of or making away with property under Section 414. Section 414 relates to the property in respect of which voluntary assistance has been rendered sufficient to conceal, dispose of or making away with it which the offender knows or has reason to believe to be stolen.

20. In this case PW1 who is the defacto complainant has stated in his cross examination that there was no complaint against the accused of this case or against the vehicle regarding theft of coal and no allegation was made on behalf of any theft regarding coal.

21. PW3, I.O. of this case also echoed the same voice of PW1 and said that during his period of investigation nobody reported him regarding theft of such coal. Moreover, PW4 and PW5 are the police persons who are cited as a witness to seizure. DW1 the appellant- accused was also cited to the witness as a seizure and he said that the seizure list was prepared in the police station and he put his signature therein. Save and except these persons no one private individual was cited as a witness to this seizure to prove the truthfulness of the factum of the seizure made by the police personnel.

22. So, I am of the opinion that the ingredients of Section 414 IPC is not present in this case to bring home the charge leveled against this accused person. I have already said that in order to bring him guilty the prosecution has to prove the articles to be stolen property which is missing in this case. The prosecution failed to prove the seized coal is a stolen property.

23. Section 414 IPC makes it an offence for a person to assist voluntarily in stealing or disposing of or making away with property which is known or has reason to believe to be stolen property. The prosecution has to establish that the property recovered is stolen property and the appellant provided help in its concealment and disposal but this ingredient of the offence is absolutely absent in this case and the learned Trial Court found guilty of this accused person for committing offence under Section 414 IPC only on the basis of surmise and

conjecture and as such the said impugned judgment and order is not sustainable under the provision of law.

24. In view of above facts and circumstances and discussion made above I am of the opinion that the impugned judgment and order of conviction passed by the learned Trial Court dated 10.12.2004 passed by the learned Sessions Judge, Bankura in connection with Sessions Case No. 13(4)03 and Sessions Trial No. 6(6)03 is liable to be set aside.

25. Accordingly, the criminal appeal being no. CRA 21 of 2005 is hereby **allowed.**

26. The impugned judgment and order of conviction passed by the learned Trial Court dated 10.12.2004 passed by the learned Sessions Judge, Bankura in connection with Sessions Case No. 13(4)03 and Sessions Trial No. 6(6)03 is hereby set aside.

27. Let a copy of this order along with TCR be sent down to the learned Trial Court immediately.

28. Urgent Photostat certified copy of this order, if applied for be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)