

CRR-815-2008 (O & M)

2025:PHHC:011218



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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
(203)

CRR-815-2008 (O&M)
Date of Decision: 27.01.2025

Jasbir Singh

... .Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

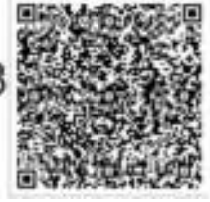
Present: Ms. Ishma Randhawa, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab,
for respondent.

JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 09.04.2008 passed by the Sessions Judge, Amritsar whereby the appeal filed against the judgment of conviction and order of sentence dated 17.01.2007 passed by the Judicial Magistrate Ist Class, Amritsar has been dismissed.

2. The FIR in the present came to be registered on 16.10.2000. The judgment of conviction and order of sentence was passed on 17.01.2007 by the Judicial Magistrate Ist Class, Amritsar. The Appeal filed against the judgment of conviction and order of sentence was dismissed on 09.04.2008 by the Sessions Judge, Amritsar. The instant revision petition



was filed on 01.05.2008 and has come up for final hearing now i.e. after a period of 24 years from the date of registration of the FIR.

3. The case of the prosecution was registered upon the written complaint made by complainant Gural Singh son of Randhir Singh, Caste Jat, resident of village Seda Singh Wala, P.S. Jaith, District Faridkot who stated in the complaint that they had come from Jaith on his Esteem Car bearing registration No. HR-23A-2650 on 11.10.2000 for getting his daughter treated and were staying at Sagar Hotel. He had parked his car outside the Hotel. On 11.10.2000, at about 11.30 p.m., he went to his room after seeing his car. This car had been purchased by him from Arwinder Singh son of Jabar Jang Singh. At about 12.05 in the mid night, he received a telephonic message from Ashok Kumar that the car was missing. His car had been stolen by some unknown persons. On the basis of a written complaint, the case was got registered. Investigation commenced. On 19.10.2000, the car was recovered from the possession of accused/petitioner Jasbir Singh, who was arrested. However, another accused, Rajinder Singh fled away from the spot. Subsequently, he was declared Proclaimed Offender by the Court. After completion of investigation, challan against the accused was presented in the Court.

4. Upon consideration of the prosecution case charges were framed against accused/petitioner Jasbir Singh under Section 411 IPC to which he pleaded not guilty and claimed trial. Later on, on 09.09.2005, accused Rajinder Singh was arrested and he was accordingly charge sheeted



alongwith accused Jasbir Singh on 24.09.2005. They both pleaded not guilty and claimed trial.

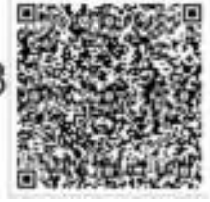
5. In order to prove its case, the prosecution examined H.C. Mohinder Singh as PW-1, Gurpal Singh complainant as PW-2, SI Lekh Raj as PW-3, Baj Singh Clerk as PW-4 and thereafter, the evidence of the prosecution was closed.

6. The statements of the accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence having been adduced against the accused was put to them. Both the accused pleaded their innocence. In their defence evidence, the accused examined Rajinder Singh as DW-1 and thereafter, closed their evidence.

7. Based on the evidence led, the accused/petitioner-Jasbir Singh alongwith co-convict/Rajinder Singh came to be convicted and sentenced by the court of the Judicial Magistrate Ist Class, Amritsar vide judgment of conviction and order of sentence dated 17.01.2007 as under:-

Name of the Convict	Offence under Section	Sentence RI/SI	Fine	RI/SI in default of payment of fine
Jasbir Singh	411 IPC	RI for 01 year	--	--
Rajinder Singh	411 IPC	RI for 01 year	--	--

8. The accused/petitioner-Jasbir Singh preferred an appeal which came to be dismissed by the Court of Sessions Judge, Amritsar, vide judgment dated 09.04.2008.



9. The aforementioned judgments are under challenge in the present petition.

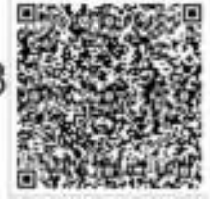
10. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 22.05.2008.

11. The learned counsel for the petitioner contends that the Courts below have erroneously held the petitioner guilty and convicted him under Section 411 of the Indian Penal Code. It was mandatory on the part of the prosecution to establish the commission of offence, beyond the shadow of a reasonable doubt, but the same had not been done.

The Courts below had failed to appreciate that no independent witness was joined by the police authorities at the time of the alleged recovery of the stolen car. The non-joining of independent witnesses was fatal to the case of the prosecution.

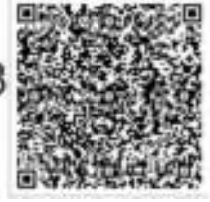
The Courts failed to appreciate that though the car was stolen on 11.10.2000, the application for registration of a case was moved on 16.10.2000. The recovery was effected on 19.10.2000. There was no plausible explanation for such a mammoth delay in lodging the FIR. The failure of the prosecution to explain the lapse in immediate registration of a case of theft makes the prosecution case feeble.

The Courts below had erred in not appreciating that Section 411 IPC was not attracted in the instant case as the prosecution had failed to establish knowledge or *mens rea* of the accused/petitioner.



The Courts below had erred in not appreciating that there was no evidence of constructive or actual possession of the accused/petitioner over the car. The Trial Court erroneously convicted the accused/petitioner, observing that he was sitting on the driving seat at the time of recovery. This fact was against the evidence on record. The two official witnesses of recovery PW-1 HC Mohinder Singh and PW-3 SI Lekh Raj did not make any concrete deposition as to the location of the accused/petitioner at the time of recovery. PW-3 stated that the accused/petitioner was on the other side of the driver seat. Apparently, the accused/petitioner was standing near the allegedly stolen vehicle and had been falsely implicated in the present case. He, therefore, contends that the accused/petitioner be acquitted of the charges framed against him. In the alternative, it is prayed that as the occurrence was of the year 2000 and the accused-petitioner/Jasbir Singh had clean antecedents, he be released on probation or his sentence be reduced to the period already undergone by him.

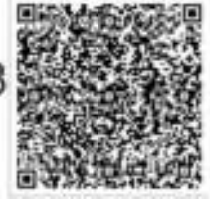
12. The Counsel for the State, on the other hand, has filed a custody certificate dated 27.01.2025 of the accused-petitioner, which is taken on record. As per the said custody certificate, the accused-petitioner has undergone 1 month 20 days out of his substantive sentence. He contends that the case stands established beyond reasonable doubt. All the material witnesses had deposed consistently regarding the manner in which the occurrence took place and the fact that the vehicle was found in possession of the accused. It was the accused-petitioner who was unable to



explain as to how the vehicle came into his possession. Therefore, the present petition was liable to be dismissed. As regards the reduction of sentence, he contends that the nature of the offence committed by the accused-petitioner did not entitle him to the concession of either probation or reduction of his sentence.

13. I have heard the learned counsel for the parties.

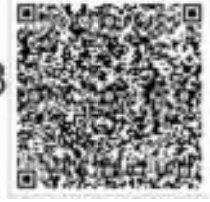
14. PW-2 Gurpal Singh/complainant testified that he had come from his village Seda Singh Wala for getting his daughter medically treated and had put up at Sagar Hotel, Amritsar. During the night, his car bearing registration No.HR-23-A-2650 was stolen and he, thereafter, reported the matter to the police, vide complaint, Ex.PD. During investigation, he handed over photo copy of document of the said car which was seized, vide memo, Ex. PE. Evidence of this witness could not be shattered in cross-examination and on the basis, thereof, it stands established beyond doubt that car No.HR-23-A-2650 was stolen by some unknown person, and machinery of law was set into motion by PW-2, on the basis of his statement Ex. PD, and formal FIR, Ex. PW-3/C, was registered in police station. Investigation was taken up by ASI Lekh Raj, who prepared site plan, Ex. PW3/D, of the place of theft of the car No.HR-23-A-2650, belonging to the complainant. The Investigation officer also recorded statement Ex. PD, regarding theft of the car which was read over and explained to the complainant Gurpal Singh, PW-2, and Lekh Raj ASI made his endorsement, Ex. PW-3/B thereon. This statement formed the basis of



the formal FIR, Ex. PW-3/C. So, it has rightly been concluded that the theft of the car belonging to the complainant was indeed, committed by some unknown person.

15. It is the case of the prosecution that this car was recovered from the accused/petitioner by PW-3 Lekh Raj ASI, vide memo Ex. PA. PW-3 Lekh Raj ASI testified that car bearing registration No. HR-23-A-2650 belonging to PW-2, in view of the Photostat copy of the registration certificate, Ex.P.1, was recovered from the accused/petitioner, while, his accomplice succeeded in fleeing and this was recovered from the accused/petitioner when he was sitting on the driver seat of this car on 19.10.2000 in the area of Rigoh Bridge.

16. At the time of recovery of the car from the accused/petitioner, PW-1 Mohinder Singh HC and Gopi Chand were also present. Although, Gopi Chand was not examined during trial, yet, Mohinder Singh HC was examined as PW-1, who corroborated the testimony of Lekh Raj ASI PW-3 on this point by categorically testifying that on 19.10.2000, on the basis of secret information, he and other members of the police party headed by Lekh Raj ASI went to Rigoh Bridge, Amritsar, where the accused/petitioner was found sitting in the car No. HR-23-A-2650 belonging to the complainant PW-2, while, his accomplice succeeded in fleeing and this car was seized, vide memo, Ex. PA. The accused/petitioner could not produce any proof of ownership of this car.



17. PW-1/HC Mohinder Singh and PW-3/ASI Lekh Raj are the material witnesses of the recovery of the stolen car belonging to PW2. Since the accused/petitioner was sitting in the car bearing registration No. HR-23-A-2650 which was stolen on 11.10.2000, from near Sagar Hotel, Amritsar, it must be held that he was in possession of the stolen car.

18. Since cogent, corroborating and reliable evidence of PW-1 and PW-3 indicates that the accused/petitioner was in possession of the car bearing registration No.HR-23-A-2650, the onus shifted upon him to furnish an explanation as to under what circumstances he was sitting on its driver seat. No motive can be ascribed to PW-1 and PW-3 to testify falsely against the accused.

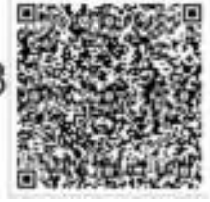
19. Though, Gopi Chand, a public witness, was associated during investigation of this case, but he was not examined as a witness. Regarding non-examination of Gopi Chand, public witness, suffice it to say that people are generally averse to depose in favour of the prosecution, as they are afraid of the consequences that may befall them at the instance of an accused. Therefore, mere non-examination of an independent public witness is not in itself sufficient to dislodge the prosecution case.

20. Further, the defence evidence of DW-1/Rajinder Singh, cannot be believed, in view of the clear and cogent evidence of PW-1 and PW-3 alongwith the other witnesses none of whom have a motive to falsely implicate the accused/petitioner. Therefore, the offence stands established beyond reasonable doubt.

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21. Resultantly, no fault can be found with the well-reasoned judgments of the Trial Court dated 17.01.2007 and the Lower Appellate Court dated 09.04.2008. Therefore, the present petition stands dismissed.

22. As regards imposition of sentence, admittedly, the FIR was registered in the year 2000 and as many as 24 years have passed ever since then. A perusal of the custody certificate of the accused-petitioner would show that he does not have any criminal antecedents and is a first time offender. Therefore, the sentence of the accused/petitioner is reduced to the period already undergone by him i.e. 1 month and 20 days subject to his paying a fine of Rs.25,000/- as compensation to the complainant/victim within a period of 4 weeks from the date of receipt of a certified copy of this order failing which he shall surrender to undergo the sentence imposed upon him.

23. The present revision petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

January 27, 2025
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No