

IN THE COURT OF MS. VAKEELAN BIBI, PCS,
JUDICIAL MAGISTRATE 1ST CLASS, JALALABAD(W)
UID CODE PB-0649.

CIS NO.CHA/118/2022	
CNR No.PBFZBI0015212022	
Date of Decision 13.04.2023.	
Complainant	STATE
Represented By	Sh.Baljit Singh Kamboj, Ld.APP
Accused on bail.	Prem Singh aged about 55 years son of Banta Singh, resident of village Peere Ke Uttar, P.S.Amir Khas.
Represented By	Ld.Counsel Sh.S.S.Kamboj, Advocate

FIR No. 22 of 13.04.2022.
U/Section 379 IPC and 21(3) of MMDR Act, 1957.
Police Station Amir Khas.

Present: Sh. Baljit Singh, Ld. APP for the State.
 Accused on bail with counsel Sh.S.S.Kamboj, Advocate.

JUDGMENT-

1. The above named accused has been sent up by the officer Incharge of Police Station Amir Khas to face the trial under Section 379 IPC & 21(3) Mines & Mineral (Development and Regulation) Act, 1957.

2. In brief, the prosecution story is that on 13.04.2022 ASI Sanjeev Kumar alongwith HC Sandeep Kumar, PHG Balvir Chand and PHG Surjit Singh, was patrolling on private vehicle being driven by ASI Sanjeev Kumar in connection with checking of suspected persons and was going towards villages Shamasdeen Chisti, Thara Singh Wala, Middha etc and when police party reached at canal bridge village Peere Ke Uttar, PS Amir Khas, an informer came to ASI and informed him that Prem Singh son of Banta Singh, resident of village Peere Ke Uttar, P.S.Amir Khas on his tractor-trolley make Mahindra 235 red in colour loaded with sand, is coming from village Bodal Peere Ke to Peere Ke Uttar and if nakabandi is held on road which leads to villages Peere Ke Uttar and Bodal Ke Peere, he can be apprehended alongwith tractor-trolley loaded with sand. Finding an information a credible, IO sent ruqa through PHG Balvir Chand to the police station, according to which above mentioned FIR registered against the accused. Thereafter, IO alongwith his companions proceeded towards disclosed place for raid. On the way, IO tried to join independent witness into investigation but nobody get ready. Nakabandi held on road leads from village Peere Ke to village Bodal Peere Ke and after some time, one tractor make Mahindra alongwith trolley loaded with sand, was found coming from the side of village Bodal Peere Ke and signal was given to stop but the driver of tractor tried to flee way. He was apprehended by IO with the help of companions. On asking he disclosed his name Prem Singh son of Banta

Singh, resident of village Peere Ke Uttar. The above said accused failed to produce any royalty slip issued by the concerned department of Punjab Government for carrying sand. IO took into possession above said tractor alongwith trolley loaded with sand vide recovery memo. Site plan prepared at the spot. Statements of witnesses were recorded. On return to the police station, case property was handed over to MHC. Test report of sand obtained from Sh. Vikas Chander JE -cum-Mining Inspector. Upon completion of investigation, challan was presented against the accused.

3. After presentation of challan, accused appeared before the court and copies of challan and other documents attached with it were supplied to the accused free of costs, as per Section 207 Cr. P.C and his separate statement in this regard, was recorded.

4. Thereafter, finding a prima facie case, charge under Section 379 IPC and 21(3) MMDR Act 1957, framed against the accused, to which he pleaded not guilty and claimed the trial. Following this, prosecution was called to lead evidence.

5. In order to substantiate its allegations, the prosecution has examined **PW1 Vikas Chander JE-cum-mining officer, PW2 HC Mohinderpal MHC, PW3 ASI Sanjeev Kumar IO, PW4 Gitesh Upveja Assistant Mining Officer, PW5 Gurmeet Singh RTA clerk, PW6 ASI Hoshiar Chand additional IO and PW7 HC Sandeep Kumar recover witness.** No other witness examined by prosecution.

Thereafter, Ld.APP for State closed prosecution evidence. Prosecution also relied upon documents i.e. **Ex.P1 test report, Ex.P2 ruqa, Ex.P3 FIR, Ex.P4 recovery memo, Ex.P4/A complaint u/s 22 MMDR Act, Ex.P5 site plan, Ex.P6 personal search memo, Ex.P7 arrest memo, Ex.P8 intimation memo, Ex.P8 attested photo copy of purchase affidavit, Ex.P9 attested photo copy of RC, Ex.P10 photocopy of purchase affidavit, Ex.P11 attested photo copy of sale affidavit, Ex.P12 recovery memo of RC, Ex.P13 general diary details, Ex.P14 endst. made by employee concerned, Ex.P15 computerized copy of RC, Ex.P16 certificate under section 65B of Evidence Act, Ex.P17 application moved to RC clerk Ferozepur, and case property MO1 to MO2. Ld. APP also relied upon copy of FIR No.68 dated 17.08.2022 P.S.Amir Khas under section 379 IPC and Section 21 of MMDR Act Ex.PA.**

6. Proceeding further with the case, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in his statement under Section 313 Cr.P.C to which he pleaded that he is innocent. He has been falsely implicated by the police due to suspicion. He has not committed any offence alleged by the prosecution.

7. In his defence, accused did not examined any witness and he closed his defence evidence.

8. Thereafter, arguments of both Learned APP for the State and learned counsel for accused heard. Learned APP for the State has argued that the prosecution has fully discharged their burden on concluding oral and documentary evidence against the accused. All the prosecution witnesses have fully established on record that accused has committed an offence under Section 379 IPC and under Section 21 of MMD&R Act 1957, to which he was charge sheeted. He further argued that offence of accused person duly established by prosecution through circumstantial and documentary evidence. At the end, after concluding his arguments, Ld.APP prayed for conviction of accused for an offence to which he was charged.

9. In response to these submissions, the Ld. Counsel appearing on behalf of accused urged with great eloquence that the accused is innocent and has been falsely implicated in the present case. He argued that accused is not liable to be punished, because the prosecution has not been able to prove the case beyond reasonable doubt against the accused. Moreover, there are so many discrepancies in the statement of prosecution witnesses, which make their testimonies inadmissible. Further, the prosecution has not joined or examined any independent witness. Before parting with the arguments, the ld. Defence counsel prayed for acquittal of accused.

10. I have heard rival submissions advanced by the Ld.APP for the State, Ld.defence Counsels and have examined the material available on the record. From perusal of record, question of determination are-

(i) *Whether prosecution proved that accused has committed an offence under Section 379 IPC and under Section 21 MMD&R Act, 1957?*

(ii) *Whether prosecution proved their case and guilt of the accused beyond reasonable doubt ?*

11. I have given my thoughtful consideration to the rival contentions of the Ld. counsels. My findings are as under -

Discussion and Findings on points for determination

12. It is prosecution story that on 13.04.2022, secret information received by ASI Sanjeev Kumar that Prem Singh son of Banta Singh, resident of village Peere Ke Uttar, P.S.Amir Khas, is coming from village Peere Ke Uttar to Bodal Peere Ke on his tractor-trolley loaded with sand without paying any royalty slip. In order to prove said allegation against accused, prosecution examined **PW1 Vikas Chander J.E.-Cum-Mining Inspector** who proved test report of sand. He stated that on 09.06.2022, he visited PS Amir Khas and MHC Mohinderpal produced sand before him for inspection of the sand. He inspected and tested sand and the said sand can be used for construction work. Accordingly, he prepared test report Ex.P1 which bears his signature. PW1 cross-examined at length however during his lengthy cross examined nothing contrary to the

prosecution version has come into light. Test report Ex.P1 also corroborated the version of PW1.

13. Thereafter, prosecution examined **PW2 MHC Mohinderpal** who also deposed that on 13.04.2022, ASI Sanjeev Kumar handed over him one tractor make Mahindra 235 alongwith trolley loaded with sand. He made appropriate entry in the relevant register and on 09.06.2022, Vikas Chander, JE -cum-Mining inspector came at PS Amir Khas and he handed over case property to him for inspection of sand. The said witness also cross-examined but served no purpose.

14. Next witness examined by prosecution **PW3 ASI Sanjeev Kumar IO** who deposed in his examination in chief on similar lines of ruqa Ex.P2 and corroborated the prosecution story. He identified the accused and case property MO1 to MO2 produced in the court. He also stated that on 13.04.2022 as per credible secret information accused arrested along with tractor and trolley loaded with sand and accused failed to produce any royalty slip issued by any concerned department. In order to substantiate his oral evidence he relied upon documents Ex.P2 ruqa, Ex.P3 FIR, Ex.P4 recovery memo, Ex.P5 site plan, Ex.P6 personal search memo, Ex.P7 arrest memo, P8 intimation memo, Ex.P9 copy of RC, Ex.P10 copy of purchase affidavit of tractor, Ex.P11 sale affidavit, Ex.P12 recovery memo of affidavits, Ex.P13 DDR and MO1 and MO2 case property. Thereafter, PW3 cross examined by defence. In his cross,

PW3 remained strict to his version in his examination in chief. He disclosed the particulars of tractor and trolley in question. No contradictory material to impeach the credibility of PW3 came into light, though minor discrepancies, are bound to occur due to passage of time.

15. Thereafter, prosecution examined **PW4 Gitesh Upveja SDO-cum-Mining Officer**. PW4 proved on record Ex.P4/A complaint under section 22 of MMDR Act, 1957 Act for initiating proceeding against the accused. PW4 also cross examined by defence. However during his cross-examination PW4 remained firm and stated that he lodged complaint under mining act against the accused after following the due procedure of law.

16. Prosecution further examined **PW5 Gurmeet Singh Clerk RTA Office, Ferozepur**, to prove the ownership of tractor bearing RC No.PB05Q 7333. The said witness deposed that as per their record, the tractor has been registered in the name of Juj Singh son of Jalla Singh. PW5 proved computerized copy of RC as Ex.P15 and furnished certificate under section 65B of Indian Evidence Act Ex.P16.

17. After PW5, prosecution examined **PW6 ASI Hoshier Chand, Additional IO** to prove the recovery of RC and other documents regarding purchase of tractor produced by Prem Singh accused which taken by him into possession vide memo Ex.P12. He further proved application to RTA, Ferozepur for verification of RC bearing No.PB05Q

7433 as Ex.P17 and endorsement made on the same by concerned clerk as Ex.P14.

18. Lastly, prosecution examined **PW7 H.C.Sandeep Kumar recovery witness**, who supported and corroborated the version of prosecution and stated that on 13.04.2022, while he was petrolling with IO ASI Sanjeev Kumar and other police official in checking of suspected persons on private vehicle at bridge of drain at village Peere Ke, a secret information received by IO that Prem Singh son of Banta Singh r/o village Peere Ke Uttar is coming from side of village Bodal Peere Ke towards village Peere Ke Uttar on his tractor Mahindra 235 red colour alongwith trolley illegally. He stated that as per secret information accused was apprehended and on enquiry disclosed his whereabouts. PW7 again stated that upon asking accused failed to furnish or produce any receipt regarding availability of sand in his trolley. Accordingly, the above said tractor trolley loaded with sand taken into possession vide memo Ex.P4 and personal search memo Ex.P6, arrest memo Ex.P7 and intimation memo Ex.P8 signed by him being attesting witness. PW7 identified his signature over Ex. P4, Ex.P6, Ex.P7 and Ex.P8. In order to culled out some favourable content for defence, PW7 cross examined at length. However, except minor discrepancies, which have no relevancy or caused no injustice to accused, no substantive material to support the defence version came into light rather PW7 supported prosecution story in his cross-examination by saying that they apprehended the accused

along with tractor and trolley loaded with sand and he signed the memos as recovery witness.

19. On the other hand, no defence evidence led by accused and he simply pleaded innocence and false implication in the present case due to suspicion, in his statutory statement under Section 313 Cr.P.C.

20. After evaluating the prosecution story and evidence on record, it is pertinent to discuss here provisions of Section 379 IPC and to check whether prosecution succeeded to prove the guilt of accused under Section 379 IPC. Section 379 IPC contains following ingredients;

- (a) dishonest removal of movable property,
- (b) such removal from the possession of another person, and
- (c) such removal without consent of another person having possession over that movable property.

21. Careful perusal of evidence of prosecution i.e. oral as well as documentary evidence shows that accused was found in possession of sand, however, prosecution failed to prove the possession of any other person over the recovered sand, from whose possession accused removed the same dishonestly. Ingredients to held accused guilty under Section 379 IPC are not met with. Accordingly, prosecution failed to prove an offence under Section 379 of IPC against the accused beyond reasonable doubt.

22. On the other hand, it is duly proved by PW3 and PW7 that accused was found in the possession of tractor trolley loaded with sand and upon asking, he failed to produce any royalty slip or receipt qua the purchase or possession of the sand in any lawful manner. Arguments of Ld. Defence counsel that for an offence under MMD&R Act, 1957 complaint of appropriate authority under Section 22 has not obtained by prosecution nor cognizance can be taken in the absence of same, is not tenable in view of Ex.P4/A complaint under Section 22 MMD&R, 1957 and evidence of PW4 Gitesh Upveja SDO-cum- mining officer who lodged complainant Ex.P4/A after following the due course of law.

23. Further in order to complete the chain of evidence, prosecution also examined PW5 Gurmeet Singh, RC RTA office and PW5 proved the ownership of tractor bearing RC No.PB05Q 7333 in question, in the name of Juj Singh son of Jalla Singh. Further to prove the ownership of tractor in question produced relied upon sale affidavit Ex.P11 executed by original owner of tractor Juj Singh son of Jalla Singh in favour of Balwinder Singh son of Prem Singh accused vide affidavit Ex.P10 photocopy of which is on file. Balwinder Singh son of accused given up by Ld. APP being won over by the accused. Perusal of file shows that Balwinder Singh got released the above said tractor-trolley on sapurdari. The fact i.e. Balwinder Singh is owner of tractor in question is son of accused Prem Singh, is not denied by the accused at any stage.

Therefore, the fact that alleged tractor-trolley loaded with sand illegally found in the custody of accused, is not disputable.

24. Furthermore, in order to convict a person under Section 21 of MMD&R, 1957 it is necessary for the prosecution to prove the guilty of accused by bringing on record sufficient material qua the fact that accused transporting, storing or caused to be transported and stored any mineral otherwise than in accordance with the provisions of that said Act. In the present case prosecution duly proved that accused was in possession of sand without any permit or license. PW3 and PW7 proved the said fact and corroborated each other to this extent that on asking accused failed to produce and royalty slip or permit as per law.

25. On the contrary, in order to establish his innocence accused failed to stepped into witness box or failed to examine any other witness to support his version. Burden to prove his innocence and false implication was upon defence. Mere vague pleas have no value in the eyes of law. Accused specifically impleaded his innocence and his involvement in the present matter due to suspicion but in this regard no instance presented or proved by accused from which his false implication be gathered nor prosecution witnesses examined by defence to this extent. Accordingly, burden to prove the facts, which were in specific knowledge of accused, has not discharged by accused despite availing sufficient opportunities for defence evidence.

26. With regard to another contention of defence regarding contradiction in prosecution evidence, this court have opinion that minor discrepancies and contradictions are bound to occur due to passage of time. It would be pertinent to mention here that accused duly represented by the learned counsel but he failed to culled out any favourable content from the witnesses of the prosecution. As a matter of right prosecution witness cross-examined at length by defence but there is no reason to discard the testimony of prosecution witnesses as there is nothing in their cross-examination so as to discard their testimony. Mere minor contradictions which causes no loss to accused or miscarriage of justice, cannot be considered to discard the prosecution version which otherwise duly proved by prosecution by leading cogent evidence. Hence, the above mentioned contention of defence does not hold any ground.

27. Another contention of ld. Defence counsel is that no independent witness joined by police at the time of alleged recovery, therefore story of prosecution is suspicious. In this regard, testimony of PW3 perused. PW3 IO stated that he tried to join an independent witness but no one get ready. And same was deposed by PW7 recovery witness. All the PWs deposed in favor of prosecution story and no material discrepancy found in their testimony. PW3 and PW7 also stated that no private person get ready to join investigation in the present matter. In this situation, this court have view that as far as the non examination of any other independent witness is concerned, there is no doubt that even if the

prosecution has not been able to produce any independent witness, still prosecution cannot be doubted on this ground alone. In these days, civilized people are generally insensitive to come forward to give any statement in a respect of any criminal offence. Reliance in this regard can be placed on the observations made in **State of U.P Vs. Anil Singh, AIR 1988 (S.C.) 1998** wherein it has been laid down as under:-

“.....We have recently pointed out the indifferent attitude of the public in the investigation of crimes. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all the witnesses to the occurrence have not been examined. Nor it is proper to reject the case for want of independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to backup a good case by false or exaggerated version.....”

Further only examination of official witnesses and lack of independent witness is no ground to acquit the accused. In this regard this court also relied upon case namely, **Karamjit Singh Vs. State (Delhi Administration) 2003, Criminal Law Journal 2021**” where it has been held by the Hon’ble Supreme Court that,

“the testimony of police personnel should be treated in the same manner as the testimony of any other witness. The presumption that person acts honestly applies, as such, in favour of police personnel as on other person and it is not proper judicial approach to distrust and suspect them without good grounds. It has been further observed that even in normal circumstance, members of public are very reluctant to accompany the police party which going to arrest a criminal or is embarking upon search of some premises.” Hence mere absence of independent witness is not a sole ground to discard prosecution version and to acquit the accused. Accordingly, above said contention of defence is not sustainable.

28. In the present case, case property produced in the court. Identification of accused has not been disputed and same has also been proved by prosecution witnesses. Further test report Ex.P1 also shows that sand recovered from the accused can be used for construction work. Also recently, the Hon’ble Punjab and Haryana High Court stated that “no laxity is warranted in such like matter. Rather such like offences need to be checked at the very first instance.” Thus, after above detailed discussion this court found that prosecution discharged its burden to prove the guilt of accused under Section 21 of MMD&R, 1957 Act beyond reasonable doubt and failed to prove an offence under Section 379 IPC to which accused was charged. Hence, question for determination are disposed of accordingly. Therefore, accused is hereby acquitted under Section 379 IPC and convicted for an offence under Section 21 of

MMD&R Act, 1957. Let the convict be taken into custody and heard on quantum of sentence.

Pronounced in the Open Court.
Dated: 13.04.2023.
“Balkar Singh Stenographer Gr.II”

(Vakeelan Bibi)PCS
Judicial Magistrate Ist Class
Jalalabad (UID No. PB0649)

QUANTUM OF SENTENCE

Present: Sh.Baljit Singh Kamboj, Ld. APP for the State.
Convict in custody represented by Sh.S.S.Kamboj,
Advocate.

1. This court has heard the convict on the question of sentence. He has pleaded that he is poor person. The convict is not a repeat offender and a lenient view should be taken while deciding the question of sentence. On the other hand, the APP for the State has requested for awarding maximum punishment provided under the law to the convicts so that a strict message can be sent to the society at large.
2. After hearing the convict and the prosecution on the question of sentence, this court is of the view that perusal of judicial file shows that the convict is not a repeat offender. Recently the Hon’ble Supreme Court directed the Courts to stress upon the law of Plea Bargaining, Probation etc. Hence, this Court is of the view that keeping in view of the gravity of offences involved, the age, and previous record of the convict; it is expedient to release them on probation of good conduct as there are great chances of the reformation of the convict.

3. Accordingly, the convict **Prem Singh** is hereby released on probation of good conduct for **Three Months** under **Section 4 of the Probation of Offenders Act, 1958** on furnishing probation bonds worth Rs. 10,000/- with one surety in the like amount each. Further, convict is also burdened with Rs. 1,000/- as cost of proceedings to be paid in free legal aid. Probation bonds furnished. The same are accepted and attested. Cost of proceedings paid by convict in the court against proper receipt.

4. The convict **Prem Singh** is hereby released on probation of good conduct for **Three Months** with a direction to remain present and suffer sentence as and when called for. Previous bail bonds of the convict stand discharged and Ahlmad is directed to send intimation in this regard to the quarter concern. Case Property, if any, be disposed off after the expiry of the period of appeal. File be consigned to the record room, after due compliance.

Date of Offence:-13.04.2022.
Date of Charge sheet: -30.07.2022.
Date of framing charge:- 30.07.2022.
Date of commencement of Evidence:- 29.08.2022
Date of Decision:-13.04.2023.

(Vakeelan Bibi)PCS
Judicial Magistrate Ist Class
Jalalabad(W)(UID Code PB-0649).

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