

**IN THE COURT OF SH.BHUPINDER MITTAL, PCS,
SUB DIVISIONAL JUDICIAL MAGISTRATE , KHANNA**

Police Challan No.94 dated 06.07.2017
CNR No.PBLDA1000571-2017
Date of Decision: 19.07.2023
CIS No.CHI/133/2017
UID No.PB-0381

State
Versus

1. Talwinder Kumar @ Vicky son of Sarabjit Singh r/o Noldi Kalan PS Samrala, District Ludhiana.
2. Pargat Singh son of Sikander Singh r/o Noldi Kalan PS Samrala, District Ludhiana.
3. Harmanpreet Singh son of Amrik Singh r/o Guru Harkrishan Nagar, Khanna, PS City Khanna.(Proclaimed offender)

Accused

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FIR No.113 dated 18.04.2016
Under Section: 379,411 IPC,
Police Station: City Khanna

Present: Ms Mandeep Kaur, APP for the State.
Accused Harmanpreet Singh declared Proclaimed Offender vide order dated 16.07.2022.
Accused Pargat Singh and Talwinder Kumar on bail with counsel Sh. R.S Talib Adv.

JUDGMENT:

1. The above said accused persons have been sent by the SHO of Police Station City, Khanna for facing trial under Section 379,411 IPC.
2. The brief factual matrix of the case of the prosecution case as per the version of the complainant Anchit Kumar are that on 15.04.2016 he was returning to his house on motorcycle bearing no. PB10DG-4399 which is in the name of his mother Rajni Rani and parked the said

motorcycle outside his house and went inside. Then at about 02:50 PM, when he came out from the house, he saw that the above said motorcycle was missing and the same was stolen by some unknown persons. He made search of motorcycle. Later on, he came to know that his motorcycle was stolen by Pargat Singh and he got recorded his statement to that effect before police. Accused Pargat Singh was arrested along with accused Harmanpreet Singh and Talwinder Singh. Accused Harmanpreet Singh and Pargat Singh made disclosure statement and motorcycles bearing no. PB707594, bearing no. PB10DY-9767, bearing no. PB43A-6098 and bearing no. PB10DG-4399 were got recovered by the accused persons. Site plan was prepared. Stolen motorcycles were recovered and the same were taken into possession. On the statement of the complainant, FIR u/s 379, 411 IPC was registered. Personal search of the accused persons was conducted. Statement of witnesses u/s 161 Cr.PC were recorded. After the completion of the investigation and other necessary formalities, challan against the accused was prepared and presented in the Court, for their trial.

3. On appearance of accused in the court, they were supplied with copies of challan and documents relied upon by the prosecution, as required under Section 207 of Cr.P.C..

4. After perusal of the documents, a prima-facie case under Section 379, 411 r/w 34 of the Indian Penal Code was found to be made out against the accused persons and accordingly they were charge sheeted

on 24.10.2017, to which they pleaded not guilty and claimed trial.

5. To prove its case, prosecution examined complainant Anchit Kumar as PW3, Investigating Officer Retired SI Gian Singh as PW2, Retired ASI Navtej Singh as PW3, ASI Gurmej Singh as PW4, ASI Balvir Singh as PW5, Bikramjit Singh as PW6, Satpal Singh as PW6(inadvertently again written as PW6). Thereafter, LD APP for the State give up PW Rajni Rani and and the evidence of the prosecution was closed by order.

6. Statements of accused Talwinder Kumar and Pargat Singh under Section 313 Cr.P.C. recorded wherein all the incriminating evidence appearing against them was put to them to which they pleaded that they are innocent and have been falsely implicated in the present case by the police officials. They did not commit any offence and nothing was recovered from them. They did not lead any evidence in their defence and closed the same vide their joint statement.

7. The cardinal principle of criminal jurisprudence is that the prosecution must prove the case against the accused beyond any reasonable doubt and the onus to prove the guilt of the accused to the hilt is on the prosecution and it never shifts. The prosecution has to stand on its own legs so as to prove its case and it can't derive any benefit from the defence version. In the light of these principles, this court proceed to determine the criminal liability of the accused.

8. I have carefully heard and well considered the respective

submissions of the parties and have perused the case file carefully.

9. At the very outset, accused persons have been charge-sheeted under 379, 411 r/w 34 IPC. This court in the light of above submissions by both Ld. APP for state as well as Ld. defence counsel, is of the considered view that the accused persons in the present case have been charged under Section 379 r/w 34 IPC for theft of motorcycle bearing no. PB10DG-4399 belonging to complainant Anchit Kumar and under Section 411 IPC for possessing stolen motorcycles bearing no. PB10DG-4399, PB70-7594 and PB10DY 9767. The prosecution in order to prove the theft of the motorcycle bearing no. PB10DG-4399 in question by accused persons, vehemently relied upon the testimony of PW3 complainant Anchit Kumar. However, complainant Anchit Kumar battered the case of the prosecution by deposing in his cross-examination that he does not know anything about the present case; he does not know as to when and who made theft of his motorcycle; he does not identify the accused; no arrest of any accused or any recovery of vehicle/two wheeler was effected in his presence. Further it has come to the surface from his testimony that he is not the owner of motorcycle bearing no. PB10DG-4399 rather a person namely Rajni Rani is the owner of the aforesaid motorcycle. When complainant Anchit Kumar is neither the owner of motorcycle bearing no. PB10DG-4399 nor has any knowledge about the present case, his testimony with regard to the theft of motorcycle bearing no. PB10DG-4399 by accused persons holds no significance. No

explanation what to talk of plausible has been given by the prosecution as to on what basis FIR was registered against accused Pargat Singh by name for stealing the aforesaid motorcycle PB10DG-4399 and later on accused persons were arrested by police when complainant Anchit Kumar is neither the owner of motorcycle bearing no. PB10DG-4399 nor has any knowledge as to when and who made theft of aforesaid motorcycle. Non examination of Rajni Rani, owner of motorcycle bearing no. PB10DG-4399 by the prosecution also proves fatal to the case of the prosecution as only she could have disclosed if her motorcycle bearing no. PB10DG-4399 was ever stolen by any person. No other direct evidence is produced by the prosecution to prove that accused persons committed theft of motorcycle bearing no. PB10DG-4399. So, in the absence of any direct evidence against the accused persons regarding the theft of motorcycle bearing no. PB10DG-4399, the accused cannot be held guilty under Section 379 r/w section 34 IPC.

10. To bring home the charge under Section 411 IPC, prosecution is under obligation to prove that accused received or retained any stolen property and such reception or retention was either with the knowledge or accused had reason to believe the said property to be stolen property. The stolen property has been defined in Section 410 IPC and any person dishonestly received the stolen property is guilty of the offence punishable under Section 411 IPC. To prove the offence punishable under Section 411 IPC, it was incumbent upon the prosecution to prove that recovery of

motorcycles bearing no. PB10DG-4399, PB70-7594 and PB10DY 9767 was effected from the accused persons and aforesaid motorcycles allegedly recovered from the accused persons were stolen property and prosecution impetuously relied upon the testimonies of complainant Anchit Kumar as PW3, Investigating Officer Retired SI Gian Singh as PW2, Retired ASI Navtej Singh as PW3, ASI Gurmej Singh as PW4, ASI Balvir Singh as PW5, Bikramjit Singh as PW6, Satpal Singh as PW6(inadvertently again written as PW6) to prove the aforesaid factum. All the aforesaid prosecution witnesses completely shattered the case of the prosecution by their depositions in their cross examinations. PW3 complainant Anchit Kumar alleged to be owner of motorcylc bearing no. PB10DG-4399 in his testimony stated that Rajni Rani is the owner of aforesaid motorcycle bearing no. PB10DG-4399; he does not know anything about the present case; no arrest of any accused or any recovery of any vehicle/two wheelers was effected in his presence; he does not identify the accused. PW6 Bikramjit Singh who is alleged to be owner of motorcycle bearing no. PB43A-6098 in his cross examination averred that RC of the aforesaid motorcycle is not in his name; he had not seen the alleged occurrence of theft; he never visited the police station with regard to the present case; police never recorded his statement and statement of any other person in his presence; he does not know if his motorcycle was recovered; he cannot identify the accused present in the court. PW6 Satpal alleged to be owner of motorcycle bearing no. PB10DY-9767 in his cross

examination stated that he did not hand over the document of ownership of motorcycle to the police in the present case; police never joined him in the investigation of the present case; he does not know whether the police has registered any FIR in the present case; police took his signatures on blank papers at Ex-PW6/A and did not disclose him as to for what purpose, they have taken his signatures; the document Ex-PQ was prepared by the police later on and they did not tell what they were going to write on it; no theft took place in his presence; he does not know who committed the said theft; he does not identify the accused of the present case; no recovery of the motorcycle was effected in his presence; he does not know as to from where the motorcycle was found; police never shown him any accused; his motorcycle was not recovered from any person; police never recorded his statement for the identification of the motorcycle. Testimony of Investigating Officer and other official witnesses further added to the miseries of prosecution. Investigating Officer PW2 SI Gian Singh in his cross examination narrated that it is correct that being Investigating Officer, he has no proof as to who committed the theft of motorcycles; no person made any claim regarding the motorcycles recovered from accused persons; he does not know about the ownership of the recovered motorcycles; he does not verified the ownership of recovered motorcycles; it is correct that he has not seen any of the recovered motorcycles in the court; it is correct that no one identified the recovered motorcycles; he does not know as to which

motorcycle was recovered as on which date and place; it is correct that he has not joined any private witness during the recovery of motorcycle and he has not prepared any document regarding the recovery of motorcycles. PW3 ASI Navtej Singh recovery witness in his cross examination proclaimed that FIR was registered against the unknown persons whereas FIR Ex-PD was registered against accused Pargat Singh by name; he cannot identify the accused persons; he does not know about the registration number of the motorcycles recovered from the accused; he does not know about the ownership of recovered motorcycles nor anybody raised any claim regarding the said motorcycles; he has not seen the case proeprty in the court. PW4 ASI Gurmej Singh, Maalkhana Incharge with whom stolen motorcycles were deposited by Investigating Officer on dated 28.05.2016 and 30.05.2016 in his cross-examination deposed that he has not seen the stated entries in his register no. 19 dated 28.05.2016 and 30.05.2016 regarding deposit of stolen motorcycles with him and even engine no., chasis no. or identification/registration no. of the said motorcycles are not traceable in the register no. 19. PW5 ASI Balvir Singh in his cross examination putforth that no accused was arrested in his presence; he did not visit the spot in the present case; no independent witnss was present when the disclosure statement suffered by the accused; he does not remember the time when the disclosure statement was given by the accused persons; he does not know whether any person claimed the ownership of the motorcycles; it is correct that complainant did not come

to him during the course of the investigation in the present case; he cannot tell the place of stated recovery; he does not remember as to how the motorcycles were taken from the place of recovery and at what time; it is correct that complainant does not identify the accused persons in his presence; he does not remember as to how the accused persons reached the stated place of occurrence; he does not remember the width of the street of stated place of recovery; it is correct that there is no proof in the documentary or in the shape of witnesses that any recovery of any motorcycle/two wheeler was ever effected from the accused persons. There is no cogent and convincing evidence on record regarding the theft of motorcycle bearing no. PB10DG-4399 by accused persons, recovered motorcycles are stolen property and their recovery was effected from the accused persons. In the light of above said discussion, it is evident that prosecution has not been able to prove the co-existence of necessary ingredients which form sine-qua-non for attracting the provisions of Section 411 r/w 34 IPC.

11. From all the above said discussion, reason and circumstances of this case, this court is of the opinion that prosecution failed to prove its case beyond reasonable doubt and the benefit of doubt always gone to the accused persons and by giving the benefit of doubt all the aforesaid accused persons namely Talwinder Kumar and Pargat Singh are hereby acquitted from the charges framed against them u/s 379, 411 r/w 34 IPC. Above named accused be set at liberty forthwith. Bail bonds already

furnished by the accused are treated under Section 437-A Cr.P.C. till expiry of period of appeal. Thereafter, the bail bonds shall automatically stand discharged on the completion of period of appeal or revision. Supardari bonds if any also stand discharged. After awaiting the result of appeal or revision if any, as the case may be, vehicle along with other requisite documents be returned to the rightful owner/claimant as per rules. File be consigned to the Record Room after due compliance and the present file will be revive as and when accused Harmanpreet Singh appear or surrender before the court or arrested by the police officials.

Announced in the open Court:

Dated:19.07.2023

Kritika

Stenographer-II

(Bhupinder Mittal)

Sub Divisional Judicial Magistrate

Khanna

'Directly Dictated'

UID No.PB-0381

Certified that this judgment contains **10 (ten pages)** and all have been duly signed under my hand.

Announced in the open Court:

Dated:19.07.2023

Kritika

Stenographer-II

(Bhupinder Mittal)

Sub Divisional Judicial Magistrate

Khanna

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