

1 _ 'State VS Ravinder Singh and other

IN THE COURT OF JUDICIAL MAGISTRATE, NAKODAR, PRESIDED
OVER BY RAJBINDER KAUR, PCS,
(UID NO.PB0390)

CIS CASE NO.	CHI-130-2018
CNR NO.	PBJLA1-001701-2018
DATE OF INSTT.	14.05.2018
DATE OF DECISION	20.05.2022

STATE OF PUNJAB

Vs.

1. Ravinder Singh S/o Veer Singh
2. Tarsem Singh S/o Rattan Singh
3. Jaspal Singh S/o Mukhtiar Singh
4. Jagdev Singh S/o Piara Singh
5. Jodh Singh @ Bhatti S/o Lt. Joginder Singh
6. Joga Singh S/o Mukhtiar Singh

All R/o Bangiwal, PS Mehatpur, District Jalandhar.

7. Paramjit Singh S/o Joginder Singh R/o Kular, PS Shahkot, District Jalandhar.

.....*Accused*

F.I.R. No. 14 Dated 21.01.2015

U/s:21 of Mines & Mineral Act, 379,420,465,466,467,468,474
of IPC and section 177,181,192-A and 196 of Motor vehicle
Act, Police Station: Mehatpur.

Present: Ms. Nirlep Kaur, Ld. APP for State.
Accused Joga Singh and Jagdev Singh on bail with Shri R.K
Sidhu, Advocate.
Accused namely Ravinder Singh, Tarsem Singh, Jaspal Singh,
Jodh Singh and Paramjit Singh vide order/judgment order dated
02.07.2019 have already been convicted

'Rajbinder Kaur JMJC Nakodar

JUDGMENT

1. Above named accused persons were forwarded by the Station House Officer of Police Station Mehatpur to face trial under section 21 of Mines & Mineral Act, 379,420,265,466,467,468,474 of IPC and section 177,181,192A and 196 of Motor vehicle Act, Police Station: Mehatpur on the allegations that on 21.01.2015, ASI Sarabjit Singh was on patrolling duty at T point of Viallge Adarman, Sh Narinderpal SDO/Mining officer moved a complaint that he alongwith his team apprehended the accused Jagdev Singh with Mahindra Arjun 555 alongwith other accused with vehicles loaded with sand. One offending Vehicle bearing RC no. PB-67-B-9190 was found registered in the name of Joga Singh son of Mukhtiar Singh. On receiving the said information, police proceeded towards place of occurrence. Ruka was sent to lodge FIR. Said tractors alongwith trolleys, were taken into police possession. Site plan was prepared. The accused were arrested and thereafter released on bail. After completion of investigation, challan was presented under section 21 of Mines & Mineral Act, and under section 379 IPC, in the court against accused for trial.

2. On presentation of challan, copies of report under section 173 Cr.P.C. as well as copies of other documents relied upon by the prosecution, were supplied to the accused free of costs, in compliance of section 207 Cr.P.C.

3. It is pertinent to mention here that the accused namely Ravinder Singh, Tarsem Singh, Jaspal Singh, Jodh Singh and Paramjit Singh have already been convicted vide order/judgment order dated 02.07.2019 by the

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Ld. Predecessor Presiding Officer.

4 After hearing learned A.P.P. for the State, learned counsel for accused and after going through the record, a prima-facie case under section 21 of Mines & Minerals Act 1957 was made out against the accused and they were accordingly charge sheeted to which they did not plead guilty and claimed trial.

5. In order to prove its version, the prosecution has examined PW1 HC Bagicha Singh, PW2 Narinderpal Singh BLEO Mining, PW3 ct Roop Singh and Ct. Harpreet Singh PW4. Thereafter, no witness was examined by prosecution and ld APP closed evidence of prosecution by suffering statement.

6. Statement of accused, as enumerated in section 313 Cr.P.C., was recorded, wherein all the incriminating evidence which has come on record, was put to them separately, to which they pleaded false implication. The accused opted not to led any evidence in support of their defence.

7. I have heard learned APP for the State, learned counsel for accused and gone through the oral as well as documentary evidence on record.

The points for determination in the present case are that:-

- 1) Whether on 21.01.2015 the area of PS Mehatpur, the accused persons were found transporting the sand (small mineral) in tractor-trollies, without any permit or license from the appropriate authority and committed the theft of sand ?
 - 2) Whether prosecution has successfully proved the guilt of accused beyond shadow of any reasonable doubt?
8. Arguments heard. Ld. APP argued that the prosecution has

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proved the guilt of accused persons by producing all material witnesses alongwith record on file. The accused persons were transporting the sand in trolley and tractor. They could not produce any permit in this regard. He prayed to convict and punish accused persons accordingly.

9. To the contrary, Id defence counsel contended that the entire case of prosecution is based on false facts and accused has been falsely implicated due to political grudge in village. No independent witness was joined while alleged recovery and while taking into possession said vehicles loaded with sand. There are material discrepancies in the statements of witnesses of prosecution which cause doubt in the prosecution version. He prayed to acquit accused on all these accounts.

POINTS FOR DETERMINATION NO.1 & 2

10. Both these points are taken up together being interconnected and to avoid repetition of discussion. In order to prove the charges leveled against accused, prosecution examined HC Bagichan Singh PW1 who proved FIR Ex.PW1/A, arrest-cum-intimation memo Ex.PW1/B and discloser statement Ex.PW1/C. PW2 is BLEO Jalandhar Sh. Narinder Pal who has proved his complaint Ex.P1 moved to ASI Balwinder Singh Investigating Officer. PW3 (inadvertently mentioned as PW2) Ct. Roop Singh who proved arrest-cum-intimation memo of accused Joga Singh Ex.PW2/A and memo of his personal search as Ex.PW2/B. PW4 Ct. Harpreet Singh proved memo of arrest of accused Jagdev Singh as Ex.PA and his personal search memo Ex.PB.

11. After scrutinizing the entire record available on file and

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considering the rival contentions of ld. APP and ld. counsel for the accused, I am of the considered opinion that prosecution has succeeded to prove its version. All prosecution witnesses have consistently deposed as per the version of prosecution and proved the relevant documents on record. They have corroborated the testimony of each other.

12. After scanning the entire evidence of prosecution discussed above, I do not find any weight in the argument of ld defence counsel that the case of prosecution is doubtful as no independent witness was joined at the time of alleged recovery of sand from accused. Generally people hesitates to join the investigation as they do not want to get involved in the police proceedings and there is also fear in their mind that this will give rise to enmity between them and the accused. Further they also hesitate to come to the court to give their evidence. However, it is the well settled principle of law that in case no independent witness is joined during investigation then in such like cases the evidence of the official witnesses are to be scrutinized carefully and applying this principle, I have thoroughly gone through the entire prosecution evidence. The prosecution witnesses have corroborated each other on all material aspects. Despite availing opportunity to cross-examine the prosecution witnesses, the learned defence counsel, could not point out any material discrepancy in the testimony of these official witnesses. Mere fact that these witnesses are official witnesses, does not mean that their evidence will not be taken into consideration. Their consistent deposition cannot be overlooked only for the want of corroboration with the the testimony of some independent witness. I am

inclined to mention here the pronouncement of Hon'ble Punjab and Haryana High Court in a case of **Kartar Singh Vs. State of Punjab, 1997(1)Recent Criminal Reports, page 195(P&H)** in which it has been held that *“statements of official witnesses have to be considered like statements of other witnesses. Their testimony can not be discarded only because of their official status.”*

13. Even otherwise, there is nothing on record that police officials were inimical towards accused so as to falsely implicate them in the present case. No material discrepancy was pointed out in the statements of prosecution witnesses, which may falsify the prosecution version and put forward the defence version that accused were falsely implicated in the present case. I am inclined to mention here the findings of Hon'ble Punjab and Haryana High Court passed in case titled as **YASH PAL KHANNA AND ANOTHER VERSUS STATE OF PUNJAB** cited as **2009 (5) RCR Criminal 425**, that *it is matter of common experience that every witness present at the time of raid or recovery cannot give the identical version, as to what happened, due to lapse of time, when their statements are recorded, after a long time of the incident. There bound to be minor discrepancies in their versions and cannot be fatal to prosecution case.*

14. When the evidence of prosecution witnesses is consistent, cogent and flawless, then such evidence is to be taken into consideration. There is no rule of law that the accused cannot be convicted on the statement of official witnesses without independent corroboration, when the evidence of official witnesses is cogent, convincing and reliable.

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15. In the case in hand, prosecution witnesses have corroborated the version of each other and that of the prosecution as well. And the accused has not produced any material to establish that the non joining of independent witness has prejudiced their interest in any way. I have perused the deposition of PW1 to PW4 thoroughly. Their testimony has not been shaken during cross-examination. These witnesses were put to cross-examination but nothing fruitful could be extracted from their mouth in favour of accused persons. Therefore, from the scrutiny of evidence led by the prosecution it has become evident that on 21.01.2015, the accused persons were apprehended while transporting the sand without having any valid licence or permit. The accused could not produce any document to show that said land from where they were taking the sand in tractors-trolleys belonged to them. Said lapse on the part of accused clearly proves that they excavated the said from the property of another without any getting valid permission. Even during course of trial, accused failed to produce any valid licence or permit to transport the sand. The identity of accused persons and vehicles involved in the offence have been duly proved on record from the evidence of prosecution. Accordingly, points for determination are decided in favour of prosecution and against the accused persons.

16. As a sequel to my findings on points for determination, I am of the considered view that prosecution has established its case against the accused beyond reasonable doubt. In view of the foregoing discussion, I conclude that the prosecution has successfully brought home the guilt of accused beyond all reasonable doubts under section 21 of Mines and

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Minerals (Development and Regulation) Act, 1957 and under section 379 IPC.

17. Therefore, it is duly proved that accused violated the order of the Hon'ble High Court whereby mining of sand has been strictly prohibited and has also violated the provision of section 4 of Mines and Minerals (Development and Regulation) Act, 1957 and found committing theft of sand. Accordingly, the accused Jagdev Singh and Joga Singh are convicted for the commission of offence punishable under section 21 of Mines and Minerals (Development and Regulation) Act, 1957. The convicts are taken into custody. Let they be heard on quantum of sentence.

PRONOUNCED
DT: 20.05.2022

Self

(Rajbinder Kaur), PCS
Judicial Magistrate,
Nakodar (UID NO.PB0390)

QUANTUM OF SENTENCE

PRESENT:- Ms. Nirlep Kaur, Ld. APP for State.
Accused Joga Singh and Jagdev Singh on bail with Shri R.K Sidhu, Advocate.
Accused namely Ravinder Singh, Tarsem Singh, Jaspal Singh, Jodh Singh and Paramjit Singh vide order/judgment order dated 02.07.2019 have already been convicted

18. Heard. The convicts pray for leniency while quantifying the sentence to be imposed upon them by presenting themselves as sole bread earners of their families and first offenders. Their counsels submitted that sending convicts to jail, will certainly spoil their future. He prayed to release the convicts in probation.

19. Ld APP has submitted that accused have committed the theft of sand/property belonged to State and as such, they are not entitled for any leniency.

20. I have considered the submissions made by convicts and ld APP. In view of the modern trend of criminal penology which aims at providing the convict with another chance to rehabilitate himself in the society as law abiding citizen instead of sentencing him to short term of imprisonment where he is likely to get spoiled further in the company of hardened criminals. The antecedent track of the accused persons as laid before undersigned is without blemish and does not suggest anything against providing benefits of probation of offenders act to them. Consequently, the convicts are ordered to be released on probation on their furnishing personal probation bonds in the sum of Rs. 40,000/- each with undertakings to be of

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good behavior for a period of six months from today and to come and receive sentence, if so called upon during this period. Costs of litigation amounting to Rs. 4500/- each is also imposed upon the convicts. In default of cost of litigation cost, the convicts shall undergo simple imprisonment for 30 days.

21. Probation Bonds have been furnished and litigation cost has been paid against proper receipt. Convicts are ordered to be released from custody forthwith. Case property if any be disposed of as per rules after the expiry of period of appeal revision if any. File be consigned to the Judicial Record Room after doing the needful.

Pronounced : -

Dated: 20.05.2022
SELF

(Rajbinder Kaur)PCS
JMIC/Nakodar.
Nakodar
(UID No. PB0390)

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