

**IN THE COURT OF Ms. GURJIT KAUR DHILLON, PCS,
CHIEF JUDICIAL MAGISTRATE ,
MANSA (UID-PB0311).**

CIS Number : CHI/127/2023
Date of Institution : 28.03.2023
Date of Decision : **05.02.2025**
CNR No. : PBMN030010962023

State of Punjab

Versus

Kuldeep Singh @ Dipi age 25 years son of Om Parkash resident of Gurudwara Gali No.1 Mansa.

.....Accused

FIR No.128 dated 05.07.2022
U/s 379 & 411 of IPC
P.S. City-2 Mansa.

Present: Ms. Deep Inder, APP for the State.
Accused Kuldeep Singh @ Dipi absent.

JUDGMENT

1. The accused present was sent up by Officer/In-charge of Police Station, City-2 Mansa, to face trial under Sections 379 and 411 of IPC.

2. The genesis of the FIR can be traced to the fact that on 05.07.2022, SI Kuldeep Singh along-with other police officials was present near Bus Stand, Mansa when he received a secret information to the effect that 3-4 months ago Kuldeep Singh @ Dipi son of Om Parkash had committed theft of a motorcycle bearing No.PB-19D-4366 from

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Gandhi School, near Railway Line. It was informed that if raid is conducted immediately, he can be apprehended with a stolen motorcycle. Finding the information reliable, ruqa was sent. On 05.07.2022, accused was apprehended with a stolen motorcycle. The motorcycle recovered from accused was taken into possession vide separate memo. Accused was arrested. Site plan was prepared. Statements of the witnesses were recorded. After the completion of investigation, challan was presented before the Court.

3. On presentation of Challan, copies of the same were supplied to the accused free of costs as required under Section 207 Cr.P.C.

4. Finding a prima facie case under Sections 379 and 411 IPC charge sheet was served upon the accused, in reply to which, he pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution has examined PW1- (retired) Inspector Kuldeep Singh, PW2- ASI Raghvir Singh and PW3- SC Raj Kumar. Thereafter, evidence of the prosecution was closed by Order when prosecution failed to conclude its evidence despite availing numerous effective opportunities.

6. All the incriminating evidence appearing against accused was put to him in his statement recorded under Section 313 Cr.P.C in which he pleaded innocence and false implication.

7. Learned APP for the State argued that with consistent testimonies of the prosecution witnesses, its case has been duly proved

against the accused and as such, he is liable to be convicted.

8. However, on the other hand, learned counsel for the accused argued that the case of the prosecution is a bundle of irregularities and there are a lot of material flaws and loopholes in the prosecution case. There is nothing on record to prove the theft of motorcycle. Learned counsel for the accused prayed that accused be acquitted.

9. After hearing arguments of learned APP, learned counsel for the accused, appraising the matter on record and the relevant law, the Court is of the opinion that in the present case, following point for determination arises:

“Whether accused committed theft of a motorcycle bearing No.PB-19D-4366 belonging to Baljinder Singh and later on he was found in possession of the same knowing or having a reason to believe the same to be stolen property. ?

10. To prove its case, prosecution examined PW-1 Inspector Kuldeep Singh (retired) who deposed with regard to the investigation that was carried out after the receipt of a secret information. He proved on record ruqa Ex.P1, FIR Ex.P2, endorsement Ex.P3, possession memo Ex.P4, site plan Ex.P5, arrest memo Ex.P6 and personal search memo Ex.P7. He also produced the case property as MO1.

11. PW-2 ASI Raghvir Singh deposed with regard to an application moved by him before Regional Transport Authority, Barnala in order to verify the ownership of the motorcycle bearing No.PB-19D-

4366.

12. PW-3 SC Raj Kumar deposed with regard to the deposit of motorcycle in the malkhana and proved on record the relevant entry as Ex.PW3/A.

13. Having gone through the above discussed evidence, it transpires that the endeavour of the prosecution to establish the claimed culpability of the accused has been not successful. In order to prove the allegations under Section 379 of IPC, it is noticed that there is not even a single witness of the prosecution who has specifically avowed for the fact that he had seen the accused committing theft of the motorcycle belonging to Baljinder Singh. Even the alleged owner Baljinder Singh did not put in appearance before the Court despite being served.

14. The accused is further charged under Section 411 of IPC for retaining stolen property. In order to fasten the liability of the accused under Section 411 of IPC, three things are required to be proved;

- (a) the property in question is the stolen property;
- b) the property was found in possession of the accused;
- c) the accused dishonestly received or retained the property knowing the same to be stolen property.

15. As the things stand out, the only and only fact which was required to be proved by the prosecution was that the motorcycle bearing No.PB-19D-4366 was owned by Baljinder Singh and not the accused from whose possession it was allegedly recovered. However, to dismay of

the prosecution there is absolute dearth of plausible evidence to establish that the property which was allegedly recovered from the accused was a stolen property and he retained it knowing the fact that it was a stolen one. In this case, not even a single document has been produced by the prosecution which fortifies the claim of the prosecution that Baljinder Singh was the owner of the said motorcycle. No bill or ownership record of such vehicle has been produced on record.

16. Not only this, what further casts doubt on the case of the prosecution is the fact that the present case was registered on the basis of secret information but no independent witness was involved while effecting recovery from the possession of the accused. As per the version of the prosecution, it was on the basis of the secret information, that the vehicles were checked and in the meantime, the motorcycle alleged to be recovered was seen coming. This very aspect goes on to show that the Investigating Agency had sufficient time to join an independent witness. In this concern, it is obligatory on the part of Investigating Officer to take the assistance of the independent witness at the spot. Even if, it is assumed for the sake of arguments that the Investigating Officer tried to join the independent witness before effecting alleged recovery, still the police party must have remained at spot for the sufficient time. The Investigating Officer should have taken the trouble to associate an independent witness to get the attestation of such independent witness regarding the authenticity of investigation conducted by him. There is no quarrel with

the proposition of law that the statement of the police officials can be acted upon and it cannot be rejected out-rightly simply because they possess the official status, but before acting upon such statements the rule of prudence requires that the statement of such witness inspires the confidence in the mind of the Court. The prosecution has not explained as to why Investigating Officer did not join any independent witness at the time of recovery.

17. From the course of narration of the above factual position, it emerges that the prosecution has not been able to produce and prove any material on the basis of which it can establish its allegations against the accused. It is a case where accusations have been levelled without convincing material. Accordingly, the point of determination is decided against the prosecution and in favour of the accused.

18. Hence, after compounding the foregoing deliberations, the Court concludes that the prosecution has been unable to establish the guilt of accused beyond reasonable doubt and as such, accused **Kuldeep Singh @ Dipi** stands **acquitted** of the charges under **Sections 379 and 411 of IPC**. His bail bonds and surety bonds are discharged. Case property be disposed of after the result of appeal or revision, if any. File be consigned to the Judicial Record Room, Mansa.

Pronounced in Open Court:
05.02.2025

Directly dictated
Shelly

(Gurjit Kaur Dhillon),
Chief Judicial Magistrate,
Mansa/UID No. PB-0311

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