

PBGDA10004902016



Presented on : 23-03-2016
 Registered on : 23-03-2016
 Decided on : 16-01-2019
 Duration : 2 years, 9 months, 24 days

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
 AT BATALA, GURDASPUR
 (PRESIDED OVER BY MS. DIVYA SHARMA)**

CHI/129/2016

CIS No:	CHI/129/2016
Criminal Case No:	19 of 23.03.2016
Date of decision:	16.01.2019

State	Versus	1. Rajbir Singh son of Santokh Singh, Caste Jatt, resident of Nathpur. 2. Mangal Singh son of Bakhsish Singh, resident of Dargabad.Accused
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FIR No. 48 dated 04.12.2015.

Under Sections : 379/411 of Indian Penal Code.

Police Station, Kotli Surat Malhi.

Present: Ld. APP for the State.
 Accused Rajbir Singh in custody (Produced through V.C)
 Accused Mangal Singh on bail with counsel Sh. T.S.
 Lalli Advocate.

JUDGMENT

1. The above stated accused have been forwarded by the

Officer In-charge, Police Station Kotli Surat Malhi, Batala before this court to face trial for commission of offences punishable under sections 379, 411 of Indian Penal Code.

2. Succinctly, the case of prosecution is that on 04.12.2015, ASI Darshan Singh along with other police officials was present at Village Bhagwanpur Dargabad in connection with checking of bad elements wherein he received a secret information that Mangal Singh son of Bakhsish Singh and Navjit Singh son of Mangal Singh, residents of Dargabad are habitual of stealing and a stolen tractor Mahindra Arjun 555 is standing in their in courtyard, if raid is conducted, then recovery can be effected. Finding information reliable, I.O sent ruqa and raid was conducted at disclosed place, where one old age person was seen driving Arjun tractor and was apprehended with the help of police officials. On inquiry, he disclosed his name as Mangal Singh son of Bakhsish Singh, resident of Dargabad and he was asked to produce documents of ownership of tractor, but he failed to do so. During inquiry, Mangal Singh disclosed that about 1- ½ years ago, he had purchased the tractor from Rajbir Singh son of Santokh Singh, resident of Nathpur for Rs. 2,70,000/- on the basis of which Rajbir Singh was nominated in the present case. Rajbir Singh who was lodged in Central Jail, Kapurthala in case FIR No. 20 dated 12.07.2015, under Section 307,452,148,149, Police Station, Qadian, was arrested and joined in

investigation in the present case. During inquiry accused Navjit Singh was found innocent, accordingly his name was kept in column No. 2 of the challan. Stolen tractor was taken into police possession and FIR was registered. Rough site plan was prepared and statement of witnesses were recorded. After completion of investigation and other formalities, challan against accused was presented.

3. On appearance of accused in the court, copies of all the documents sent along with the police report and relied upon by prosecution, were supplied to them, free of cost as per mandatory requirement of section 207 Cr.P.C.

4. From the perusal of those documents and after hearing learned A.P.P. for the State and learned defence counsel, sufficient grounds were made out to initiate trial against accused for the commission of offences punishable under sections 379/411 of Indian Penal Code and the charges were framed accordingly, to which accused pleaded not guilty and claimed trial.

5. To substantiate its case, prosecution examined following witnesses:-

PW1	HC Singh	Dilbagh	Witness of recovery to prove on record memo Ex. PA, vide which Tractor Mahindra was taken into police possession, Arrest-cum-intimation memo of accused Mangal Singh as Ex. PB, Personal search of
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		accused Mangal Singh as Ex. PC, Identification memo of tractor Ex. PE, memo Ex. PD vide which RC of tractor was taken into possession.
PW2	Kundan Singh	Complainant, who proved on record original RC and affidavit executed by Parminder Singh regarding the sale of tractor as Ex. PX and Ex. PY.
PW3	HC Kulwinder Singh	Witness to prove deposit of stolen tractor in police station.
PW4	ASI Darshan Singh	Investigating Officer to prove on record Ruqa Ex. PW5/1, FIR Ex. PW-5/2, Recovery memo of tractor as Ex. PA, Arrest-cum-intimation memo of accused Mangal Singh as Ex. PB, Personal search as Ex. PA, Rough site plan Ex. PW-5/C, Identification memo of tractor Ex. PE, memo Ex. PB vide which RC of tractor taken into possession, Application Ex. PW-5/4 regarding verification of ownership of tractor.
PW5	Veena Clerk, RTO Office,	Witness to prove record regarding RC of tractor bearing no. PB23-M-2438 and

	Gurdaspur	application Ex.PW-5/4 and her signatures as Ex. PW-5/1.
PW6	SI Lakhwinder Singh (wrongly mentioned as PW-3)	Investigating Officer to prove application moved by complainant Kundan Singh as Ex. PW-2/A and police proceedings Ex. PW-3/A.

Thereafter, despite availing numerous opportunities prosecution failed to conclude its evidence, accordingly the same was closed by order on 20.8.2018.

6. Statement of accused Rajbir Singh was recorded under Section 313 C.r.P.C through Video Conferencing as he could not be produced in court being a gangster whereas statement of accused Mangal Singh was recorded in court, so as to apprise them of the incriminating circumstances appearing against them in evidence led by prosecution, to which they pleaded their innocence and claimed false implication.

7. No defence evidence lead by accused person despite availing sufficient opportunities, so, defence evidence was closed by order.

8. The court has heard the submissions made by Ld. APP for the State and Ld. Defence counsel and has gone through the prosecution evidence. From the entire case, the following points for

determination emerge out

1. Whether on intervening night of 17/18.06.2013 in the area of Dalla, accused Rajbir Singh dishonestly took moveable property I.e Tractor Mahindra Arjun 555 out of possession of complainant Kundan Singh without his consent and moved it in order of such taking and committed an offence punishable under Section 379 of IPC?.
2. Whether on 04.12.2015 in the area of Village Dargabad, accused Mangal Singh dishonestly retained the stolen property belonging to Kundan Singh knowing or having reason to believe that such property is stolen property and committed an offence punishable under Section 411 IPC.?
3. Whether the evidence of prosecution led on file is sufficient to hold accused guilty and to convict and sentence them under Section 379/411 IPC?

POINTS NO. 1 TO 3 FOR DETERMINATION :-

9. All the points for determination have been taken up together for the sake of brevity and to avoid repetition. Learned APP for the State has argued that all the prosecution witnesses have deposed on the lines of the prosecution story and proved on record documents such as Ruqa Ex. PW5/1, FIR Ex. PW-5/2, Recovery memo of tractor as Ex. PA, Arrest-cum-intimation memo of accused Mangal

Singh as Ex. PB, Personal search of accused Mangal Singh as Ex. PC, Personal search as Ex. PA, Rough site plan Ex. PW-5/C, Identification memo of tractor Ex. PE, memo Ex. PB vide which RC of tractor taken into possession, Application Ex. PW-5/4 regarding verification of ownership of tractor. Thus, placing reliance on oral testimony of these witnesses and documentary evidence produced on record by prosecution, learned APP for the State has further contended that the case of prosecution has been established on record beyond the shadow of reasonable doubt, therefore, accused must be convicted and sentenced with the maximum punishment as provided under law.

10. On the other hand, learned defence counsel has raised his counter arguments thereby stating that both the accused are innocent and they have been falsely implicated in this case as there is no evidence on record suggesting that any such recovery has ever been effected from the accused Mangal Singh, alleged to have been recovered, was a stolen property. Not only this prosecution has also failed to prove alleged theft by Rajbir Singh as he was implicated in this case merely on the basis of statement of Mangal Singh. He has pointed out that even the case property has never been produced before this court nor the alleged owner of that truck has been examined in this case to prove the fact that the said truck belongs to him. He has submitted that since there is no evidence to connect the

accused with the commission of alleged offence, as such, in these circumstance, both the accused cannot be convicted and they surely deserve to be acquitted from the charges framed against them for want of proper, cogent and convincing prosecution evidence.

11. It is the version of prosecution that on 4.12.20016, IO received a secret information that Mangal Singh has kept a stolen truck and finding the said information reliable house of the accused was raided whereby Mangal Singh was driving the tractor and on asking could not produce the documents of ownership. Thereafter on 11.12.2015, Kundan Singh came and identified the recovered tractor as his stolen tractor. During interrogation Mangal Singh stated that about one and a half year back he had purchased the tractor from Rajbir Singh, on the basis of which Rajbir Singh was also named in the FIR. However, from the perusal of file, it is apparent that to prove the allegations of commission of offences punishable u/s 379/411 IPC against the accused, no cogent or convincing evidence has been led on record by prosecution.

12. Before proceeding further, it is necessary to mention here that accused Rajbir has been charged with the commission of offence punishable under Section 379 IPC whereas accused Mangal Singh has been charged with the commission of offence punishable under Section 411 IPC. Therefore, before proceeding to discuss whether offence under Section 411 IPC is made out or not, it is necessary to

see whether the tractor was actually stolen or not. Section 379 IPC merely provides for punishment for commission of theft, whereas theft has been defined under Section **378 IPC** which provides as hereunder:-

“Whoever, **intending to take dishonestly any movable property out of the possession** of any person **without** that person’s **consent, moves** that property in order to such taking, is said to commit theft.”

From the perusal of definition of theft, it transpires that to make out an offence under Section 379 IPC against accused Rajbir Singh, it is necessary that he must have taken the property (tractor) out of the possession of Kundan Singh. In order to prove the factum of theft, **Kundan Singh** (the alleged owner of truck) stepped into the witness box as **PW-2** and stated that on 17.6.2014 he had parked the tractor outside his house, but on 18.6.2014, he saw that it was stolen. Thereafter on 23.6.2014 he moved an application before SHO Sekhwan reporting about theft of his tractor. Thereafter he came to know that his tractor has been recovered by P.S. K.S. Malhi, accordingly he went there and identified his tractor Arjun Mahindra. During the cross examination witness stated that he had purchased the tractor from Parminder Singh and did not see tractor being stolen. When the star witness of this case has stated that he did not his tractor being stolen by accused Rajbir Singh or anybody else, then

the question of commission of theft by him goes out. In final report submitted by the police under Section 173 Cr.P.C. it is stated that Mangal Singh during his interrogation stated that he purchased tractor from Rajbir Singh, on the basis of which name of Rajbir Singh was impleaded. Prosecution has miserably failed to prove that Rajbir Singh committed alleged theft, neither Kundan Singh nor anybody else saw Rajbir Singh committing theft. No such statement of Mangal Singh recorded during investigation is on file moreover no other witness has been examined to prove link between Mangal Singh and Rajbir Singh or that Mangal Singh purchased tractor from Rajbir Singh. Moreover Investigating officer during his cross examination also admitted that Rajbir Singh was involved in the present FIR at the instance of Mangal Singh. In such circumstance, court is of the considered view that prosecution has failed to prove that Rajbir Singh committed theft of tractor and therefore **offence under Section 379 IPC is not made out.**

13. Accused Mangal Singh has been charged with the commission of offence punishable under Section 411 IPC and the primary ingredient of Section 411 IPC is that it must be proved that the alleged stolen property belongs to some other person, than the one in whose custody it was found. In order to prove the fact that the allegedly recovered tractor Mahindra Arjun PB-23-M-2438 is stolen, it has been stated by **PW-4 ASI Darshan Singh, investigating**

officer of this case that the allegedly recovered tractor belongs to Kundan Singh and he identified it vide memo Ex.PE and produced copy of RC which was taken into police possession vide recovery memo Ex.PD. **Kundan Singh PW-2** stepped into the witness box and stated that on the intervening night of 17/18.6.2014 his tractor was stolen, but he did not see it getting stolen. Thereafter he moved an application Ex.PW2/A to the SHO, Sekhwan which is Ex.PW2/A. To prove application Ex.PW2/A, prosecution examined **SI Lakhwinder Singh as PW-3** who at that time was posted in P.S. Sekhwan. SI Lakhwinder stated that on 23.6.2014, Kundan Singh moved a complaint reporting about theft of his tractor which was endorsed by him, subsequent to which police proceeding Ex.PW3/A was recorded. It is pertinent to mention here that application Ex.PW2/A placed on record is merely a photocopy and not only this when PW-3 was examined to prove it, he did not bring any record regarding the original application moved before the concerned police station. Interestingly, during the cross examination, witness stated that they have no record pertaining to application Ex.PW2/A and admitted that he did not write on the said application. Not only this witness also stated that application Ex.PW2/A was handed over by him to Kundan Singh. The court completely fails to understand that firstly prosecution has attempted to prove photocopy of application allegedly moved by Kundan Singh. Secondly, the concerned police

station handed over that application to Kundan Singh only. Neither any report is placed on record as to the proceeding conducted once application Ex.PW2/A was moved nor FIR if any was registered qua theft of tractor. In such circumstance the court is constrained to observe that prosecution has miserably failed to prove application Ex. PW-2/A.

14. Ld. APP for the State argued that accused Mangal Singh was found to be in possession of tractor bearing no. PB-23-M-2438. From the perusal of Ruqa Ex.PW5/1 i.e. the first information on the basis of which FIR was registered against the accused, it transpires that neither the number nor chasis number or engine number of the tractor is mentioned. Even in the FIR, above mentioned information is not there. As per the story of prosecution Kundan Singh came to the police station and identified his tractor. The court fails to understand when the number of tractor is not mentioned in the ruqa then how did the police trace out Kundan Singh. As per Kundan Singh PW-2 police gave him information on 11.12.2015, but as per IO ASI Darshan Singh, Kundan Singh himself came to the police station on 11.12.2015. IO also stated that he did not receive any information from any police station regarding registration of FIR. Hence in the absence of any document in the tractor or number how did the police trace out Kundan Singh and come to know that his tractor has been stolen. Furthermore, as discussed in the preceding

paragraphs nothing has come on record suggesting that the alleged theft of tractor was committed by the accused. No witness was examined by prosecution in this regard. As discussed earlier the application reporting the theft Ex.PW2/A has also not been proved by the prosecution. In the entire evidence Kundan Singh has nowhere stated that he saw accused committing theft of his tractor. Moreover as per prosecution theft was committed on the intervening night of 17/18.6.2014 but the alleged application was moved by him at P.S.Sekhwan on 23.6.2014 i.e. after delay of about six days. Prosecution has failed to prove delay on part of Kundan Singh to report about alleged theft of his tractor, if any. Moreover, even MHC Kulwinder Singh with whom the case property was delivered has not deposed about the tractor number which was deposited with him. In such like circumstances it cannot be presumed that Mangal Singh was found in possession of alleged stolen tractor. Accordingly, **offence under Section 411 IPC is not made out.**

15. With the observations made above, it is clear that prosecution has miserably failed to prove the case set up by it and the guilt of both the accused as alleged. According, accused **Rajbir Singh and Mangal Singh** are ordered to be **acquitted of the charge framed against them**. Bail bonds and surety bonds of Mangal Singh shall remain intact and will be treated as bail bonds for the purposes of Section 437-A of CrPC. Case property, if any, be

disposed of as per rules, after the expiry of period of filing an appeal or revision, if any and file be consigned to record room, after due compliance.

Note : Certified that all the pages of this
Judgment are signed by me, which have been
dictated and typed directly on computer .

Date: 16-01-2019

(Ms. Divya Sharma)
Judicial Magistrate 1st Class,
Batala. UID No. PB0539.

Dictated on : 16-01-2019
Transcribed on : 16-01-2019
checked on : 16-01-2019
Signed on : 16-01-2019

(Ms. Divya Sharma)
Judicial Magistrate 1st Class,
Batala. UID No. PB0539.

Karmjeet Singh, Stenographer Grade-II

