IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 **CRR-1561-2010 (O&M)**
Reserved on: 12.10.2026
Pronounced on: 30.10.2026
Uploaded on: 30.10.2026

Whether only the operative part of the judgment is pronounced or whether the full judgment is pronounced : ***Full***

JASWINDER SINGH AND ANOTHER

… Petitioners

Versus

STATE OF PUNJAB

… Respondent

CORAM: HON'BLE MS. JUSTICE PUJA CHOPRA

Present: Mr. Rajinder Goyal, Advocate,
Mr. Amarjeet Singh, Advocate and
Ms. Sanya Singla, Advocate for the petitioners.

Mr. Raj Karan Singh, AAG, Punjab.

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PUJA CHOPRA, J.

The present Criminal revision petition has been preferred by the petitioners - Jaswinder Singh and Sandeep Singh, both of whom were convicted under section 411 IPC and sentenced to undergo rigorous imprisonment for a period of one year with a fine of ₹500/- each with default clause of simple imprisonment for a period of two months each. The judgement of conviction and order of sentence dated 09.07.2009 passed by learned Sub Divisional Judicial Magistrate, Sardulgarh were challenged by the petitioners before the learned Sessions Court, Mansa and vide judgement dated 17.05.2010, the appeal preferred by them was

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dismissed by learned Additional Sessions Judge (*Ad hoc*) Fast Track Court, Mansa.

2. In nutshell, the case of the prosecution was that on 21.02.2005, complainant-Darshan Singh made a complaint to S.I.-Karnail Singh to the effect that he along with Buta Singh were coming on his motorcycle from Village Pilshiyan, Police Station Ratiya (Haryana) to Jhunir. Then, at about 6/6:30 PM when they reached near country liquor vend Moffar, a Maruti car of white colour came there from behind which stopped in front of their motorcycle. Four persons alighted from the said Car and demanded the key of motorcycle at pistol point from them. Out of fear, the key of motorcycle was handed over to accused and they fled away with his motorcycle. The statement of complainant- Darshan Singh as aforesaid was recorded and FIR No.24 dated 21.02.2005 was registered under section 382 IPC. The motorcycle in question was stated to have been purchased from Singla Motors, Mansa for a sum of ₹33,500/- on 25.01.2005 and was of make Boxer CT 100, red in colour, having engine number DUM-BLJ14372 and Chasis number DUFBLJ54142.

3. During the course of investigation, the statements of witnesses were recorded, accused were apprehended, recovery was effected from the petitioners and after completion of investigation, Challan was presented before the learned Illaqa Magistrate.

4. During trial, prosecution examined as many as 8 witnesses and produced documentary evidence on record. Thereafter statements of accused under section 313 Cr.P.C. were recorded wherein they pleaded innocence and false implication, however, no defence evidence was led. It is apposite to mention here that initially four accused faced trial, namely present petitioners-Jaswinder Singh and Sandeep Singh and two other co-

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accused namely Gurpal Singh and Nanak Singh. However the latter i.e. Nanak Singh confessed during trial regarding snatching of motorcycle by him and his co- accused. Upon his confession, Nanak Singh, co- accused of present petitioners, was convicted and sentenced under section 382 IPC vide separate judgement dated 29.01.2009.

5. However, in the present case, out of the remaining three accused who originally faced trial under section 382 IPC, Gurpal Singh was acquitted of all charges whereas the present petitioners-Jaswinder Singh and Sandeep Singh were convicted under section 411 IPC only. The petitioners were not convicted under section 382 IPC and the learned trial court held that the confessional statement of Nanak Singh could not be read against other co-accused including petitioners. The acquittal of petitioners under section 382 IPC has not been challenged by the prosecution and has attained finality.

6. Learned trial court held the petitioners guilty under section 411 IPC for the reason that the present petitioners were apprehended on 13.04.2005 on the motorcycle alleged to have been snatched from complainant- Darshan Singh, which was found to be in possession of both the petitioners. Gurpal Singh was not found in possession of motor cycle in question, hence acquitted under Section 411 IPC. The petitioners were acquitted under section 382 IPC as complainant - Darshan Singh, who appeared in the witness box as PW-1, did not identify the accused present in the court including the petitioners and stated that the accused present in the court have not snatched motorcycle from him. Likewise, PW-3- Buta Singh, who was allegedly accompanying the complainant at the time of snatching of motorcycle, also did not support the case of prosecution. Thus, none of the witnesses deposed seeing the accused snatching the

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motorcycle from complainant- Darshan Singh at pistol point. Complainant- Darshan Singh also did not state that the motorcycle was recovered from the possession of the accused in his presence. PW-5, Surjit Singh, Panchayat member in whose presence accused/petitioner Sandeep Singh allegedly admitted his guilt also did not support the prosecution case and stated that accused Sandeep had not admitted guilt in his presence. However, as aforesaid the petitioners were convicted not under Section 382 IPC but under Section 411 IPC on account of recovery of motorcycle from their possession on 13.04.2005.

7. Learned State Counsel has filed living status report dated 10.10.2006, as verified by Gurpreet Kaur ASI, Police Station Jhunir along with death certificate of petitioner- Sandeep Singh. As per the same, Sandeep Singh is stated to have expired on 10.01.2012. Thus, the present petition qua Sandeep Singh stands abated.

8. As regards, Jaswinder Singh, learned State Counsel has filed custody certificate, a perusal where of reveals that besides the present case, Jaswinder Singh stands convicted in another case FIR No.55 dated 05.04.1996, under Sections 419, 420, 465, 467, 468 and 120B IPC, Police Station Kotwali Bhatinda. As per custody certificate, Jaswinder Singh is also stated to have been involved/produced in four other cases/FIRs on production warrants, the details of which have been mentioned in the custody certificate. All such cases pertain to the year 2004/2005, registered at different police stations. Learned State counsel submits that the petitioner -Jaswinder Singh is a habitual offender and has rightly been convicted by the learned trial court under section 411 IPC and the appeal preferred by him has been rightly declined by the learned Additional Sessions Judge (*Ad hoc)* FTC, Mansa.

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9. Per contra, learned counsel for petitioner No.1, namely Jaswinder Singh has produced the copies of judgments of acquittal passed in favour of petitioner in all 5 cases as aforesaid including FIR No.55 wherein the judgement of acquittal was passed in favour of petitioner by this court in Criminal Revision No.2360 of 2003 decided on 27.04.2009. In other four cases mentioned in the custody certificate filed by learned State counsel also, the petitioner is stated to have been acquitted.

10. Coming to the present case, the learned counsel for petitioner has primarily urged that once the charge was framed against petitioner under section 382 IPC, the petitioner could not have been convicted under section 411 IPC. Both the offences i.e. Section 382 IPC and Section 411 IPC are distinct offences and have separate ingredients and in absence of charge framed under section 411 IPC, no conviction there under can be sustained against petitioner as Section 411 IPC is not a minor offence of Section 382 IPC within the meaning of Section 222 Cr.P.C. Alternatively, the learned Counsel for petitioner has argued that the recovery of motorcycle has not been proved against petitioner as the only witnesses who proved the recoveries are ASI Gamdoor Singh and ASI Bharpur Singh who have contradicted each other on material particulars, and there is no other independent witness of recovery of motorcycle from the petitioner. That apart, complainant Darshan Singh before whom the recovery of motorcycle is stated to have been effected has also not approved the prosecution case.

11. The first argument of the learned counsel for petitioner is liable to be rejected as even though Section 222 Cr.P.C. may not be applicable but Section 221 (2) Cr.P.C. is applicable in a situation like this.

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For invoking section 222 Cr.P.C., the ingredients of the minor offence with which a person is sought to be charged should be included in the offence with which he already stands charged. Now, Section 411 IPC requires receipt or retention of stolen property with knowledge or reason to believe that the same was stolen. These ingredients are not part of section 382 IPC. Merely because Section 411 IPC carries lesser sentence than section 382 IPC is not sufficient to bring it within the fold of section 222 Cr.P.C. or to call it as minor offence of section 382 IPC. However, the position is different under Section 221(2) Cr.P.C., which permits conviction for an offence which the accused is shown to have committed and for which the accused has not been charged, if it appears in the evidence that he committed a different offence for which he might have been charged under the provisions of section 221 (1) Cr.P.C. Illustration (b) specifically covers a case where if a person is charged with theft, and it appears that he committed the offence of receiving stolen goods, he may be convicted of receiving stolen goods, though he was not charged with such offence. Section 222 and 221Cr.P.C. are reproduced hereunder:

> *"**221. Where it is doubtful what offence has been committed**:*
>
> *(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.*
>
> *(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the*

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offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

***222. When offence proved included in offence charged**:*

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

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> *(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.*
>
> *Illustrations*
>
> *(a) A is charged, under Section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under Section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said Section 406.*
>
> *(b) A is charged, under Section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under Section 335 of that Code.*

12. Though, ideally, the prosecution-should have invoked the provisions of section 216/217 Cr.P.C. for amendment of charge during the course of trial as charge can be amended at any stage before judgement is pronounced after complying with the procedural formalities mandated under the said sections. However, in the present case even though no amendment of charge was needed and conviction was made under Section 411 IPC straight away, no prejudice is shown to have been caused to petitioner who had a fair chance during trial to meet the allegations against him. Section 464 of Cr.P.C. comes to aid in such a situation which reads as under:

> **464. Effect of omission to frame, or absence of, or error in, charge**:
>
> (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

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(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may:

(*a*) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(*b*) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

13. Initially, the case of the prosecution was that motorcycle was snatched by petitioner and his co-accused from the complainant and subsequently the said motorcycle was recovered from the possession of two of the accused(s), including the present petitioner. The fact of recovery of motorcycle from petitioner was put to petitioner under section 313 Cr.P.C. though under different context under section 382 IPC and not as recovery under section 411 IPC. However, no prejudice has been caused to petitioner if instead of Section 382 IPC, conviction was under Section 411 IPC. Thus, under section 221(2) Cr.P.C. learned Courts below were well within their power to convict the petitioner under section 411 IPC though he was charged originally under section 382IPC.

14. In ***Biran Lal versus State of MP 1952(2) SCC140,*** the accused was tried under section 379IPC for stealing five boxes of crackers from a railway wagon and on appeal, the Sessions Judge altered the conviction to section 411 IPC. The Hon'ble Supreme Court upheld the conviction under section 411 IPC finding enough circumstances to show

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that accused being in possession, had reason to believe that the goods were stolen.

15. Now coming to the second limb of argument raised by learned counsel for petitioner, learned trial Court has convicted the petitioner by invoking presumption under section 114 of the Indian Evidence Act. Illustration (a) to Section 114 of Indian Evidence Act allows the court to presume that a person who is in possession of stolen goods soon after theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession. Section 114 of Indian evidence act is reproduced here under;

> ***114. Court may presume existence of certain facts****:*
> *The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
> *Illustrations*
> *The Court may presume—*
> *(a) that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession; xxx xxx xxx xxx"*
> *"But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it—*
> *As to illustration (a)—A shop-keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business; xxx xxx"*

16. Section 411 IPC penalises dishonest receipt of stolen property. The two ingredients of section 411 IPC are firstly, dishonest

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receipt or retention of any stolen property and secondly such receipt or retention of stolen properties with knowledge or having reason to believe the same to be stolen property. For conversion of offence from section 382 IPC to 411 IPC, which is permissible under section 221(2) Cr.P.C., another aspect to be borne in mind is that ingredients of section 411 IPC must be established *per se.* If the ingredients of offence under Section 411 IPC are not established from the evidence, the conversion from Section 383 IPC to Section 411 IPC would fail. No doubt, by virtue of Section 114 Indian Evidence Act, 1872, the court can presume that a person who is in possession of stolen goods soon after theft is either the thief or has received the goods knowing them to be stolen and the burden to prove otherwise is upon the accused who has to account for his possession. But, before invoking the presumption, the prosecution has to establish the factual aspects and it is only after the foundational facts are proved that the presumption can be invoked.

17. In the present case, even though the complainant Darshan Singh (PW1) was declared hostile, the learned trial Court relied upon his cross-examination where he admitted that he had made statement 'Mark A' to the police on the basis of which the present case was registered. As per his statement, motorcycle, make boxer was snatched from him by three persons having haircut and one person having turban and untied beard at pistol point. He had also stated that he had given the bill of motorcycle to the police which was taken into possession by police vide recovery memo 'Ex. P.A.'. He further identified his motorcycle in the court by stating that it is the same motorcycle which was snatched from him on the said date and time. PW-8, ASI-Karnail Singh, had recorded the statement of Darshan Singh on 21.02.2005 ('Mark A'), proved the

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statement as having been made to him and signed by Darshan Singh in Punjabi after admitting the same to be correct. PW-8, ASI-Karnail Singh also recorded police proceedings underneath the said statement on basis of which formal FIR (Ex.PW-8/A) was registered. This evidence only demonstrates that a particular motorcycle was snatched from complaint-Darshan Singh at a particular time regarding which he had made the complaint to police which was recorded and FIR was registered. However, the names of accused were not mentioned in the statement/FIR. No test identification parade was conducted by the police and in the court also, PW1 did not identify the accused/present petitioner. For invocation of section 411 IPC, the receipt or retention of stolen property has to be proved as a fact. In other words, the prosecution is obliged to prove the possession of stolen property by accused. It is only after the prosecution is able to establish the possession of stolen property by accused that the question of *mens rea* or invocation of presumption under section 114 Indian Evidence Act, would arise.

18. In **'*Sd. Shabuddin v. State of Telangana*, 2025 SCC OnLine SC 1734'**, the learned trial Court had acquitted the accused under Section 302, 201, 379 IPC, but convicted the accused under section 411 IPC. The Hon'ble Supreme Court set aside the same and held that the conviction cannot stand under section 411 IPC because both accused had been acquitted of theft under section 379 IPC. High Court had wrongly presumed under section 114 Indian Evidence Act, 1872. The Hon'ble Supreme Court in the above mentioned case has held as under:

> ***"14.*** *In our considered opinion, the High Court has grossly erred by placing reverse burden of proof on the accused to account for the cash in their possession. The High Court clearly erred in applying the presumption under Section 114*

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of the Evidence Act to convict the appellant for the offence punishable under Section 411 IPC. The illustration (a) under the said provision reads as below:—

> ***"114. Court may presume existence of certain facts.***
>
> *…*
>
> *(a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."*
>
> *The aforesaid illustration would only apply where the prosecution establishes the foundational fact of the theft of goods and the possession thereof by the accused soon after the incident. There is no evidence on record as to the total amount which the deceased was carrying with him when the incident took place. In absence of any convincing evidence regarding the amount being carried by the deceased, by the mere fact of recovery of a cash amount of Rs. 25,000/- from the possession of the accused, it cannot be inferred that the said amount was stolen goods. Suffice it to say, that the cash so recovered had no special or distinct identification characteristics and thus, the same could not be linked to amount allegedly stolen from the deceased even if such allegation was proved by tangible evidence.*

14.1. *In a criminal prosecution, the initial burden is always on the prosecution to discharge, whereby the allegations raised by it against the accused person are preliminarily satisfied. If the prosecution is unable to do so, by virtue of Section 102 of Evidence Act, the criminal trial initiated against the accused deserves to be dismissed without asking the accused to lead any evidence from the side of defence.*

14.2. *In our view, to base a conviction under Section 411 IPC solely on the ground that both the accused were unable to account for being in possession of such huge amount of cash is both incorrect and untenable. Therefore, the approach*

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> *adopted by the High Court in upholding the order of conviction of Trial Court for inability of the accused to account for the cash so recovered from their possession is alien to the criminal jurisprudence of our legal system."*

19. Thus, if the property is not established to be stolen, conversion to section 411 IPC fails, however, as held in '***Biran Lal versus State of MP 1952(2) SCC 140'***, it would succeed if theft is proved and only the role of accused is in doubt.

20. In the present case not only was the prosecution unable to prove that the accused had snatched the motorcycle from complainant but even possession of petitioner has not been established. As aforesaid, complainant did not state that the motorcycle was recovered from the possession of the accused in his presence. Thus, the only remaining witnesses of recovery were ASI- Bharpoor Singh and ASI-Gamdoor Singh who have been examined by prosecution as PW-2 and PW-6, respectively. The motorcycle was snatched from complainant- Darshan Singh on 21.02.2005 and it was recovered on 13.04.2005 from possession of Jaswinder Singh (present petitioner) and Sandeep Singh (since deceased). Complainant- Darshan Singh did not state about recovery of motorcycle from possession of accused even though the case of the prosecution was that the recovery was affected from the accused in the presence of complainant- Darshan Singh. There is no other independent witness to the recovery. There are material contradictions in the testimonies of PW-2 and PW-6. As per PW-2, ASI- Bharpoor Singh, Naka Bandi was based on secret information. However, no such fact was stated by PW-6. PW2 stated that complainant- Darshan Singh was joined from Gurudwara Jhunir whereas ASI- Gamdoor Singh stated that Darshan Singh was joined near his house. PW-2 stated that the motorcycle was taken from the place

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of recovery by driving, but according to PW-6, the motorcycle was taken in Canter. These discrepancies cannot be brushed aside as minor discrepancies. The prosecution has neither been able to prove receipt or retention of stolen property by accused nor the accused have been proved to be in possession of stolen motorcycle.

21. The Hon'ble Supreme Court in ***Krishnegowda v. State of Karnataka*, (2017) 13 SCC 98** has held under:

> ***"26.*** *Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt.*
>
> ***27.*** *Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the court, but if these contradictions create such serious doubt in the mind of the court about the truthfulness of the witnesses and it appears to the court that there is clear improvement, then it is not safe to rely on such evidence."*

22. The Hon'ble Apex Court in ***Narendra Singh v. State of M.P.*, (2004) 10 SCC 699** has laid that:

> ***"30.*** *It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled*

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that there is a long distance between "may be" and "must be"."

23. In view of the aforesaid, the petitioner is acquitted by giving him benefit of doubt. The criminal revision is allowed.

24. Bail bonds, if any, shall stand discharged.

Pending applications, if any, also stand disposed of.

(PUJACHOPRA)
JUDGE

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Whether speaking / reasoned: YES/~~NO~~
Whether Reportable: YES/~~NO~~

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