

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.449 of 2012

1. Manoj Kumar Kasera, son of Asarfi Lal Kasera
 2. Bholu Sao, son of late Bhagwan Saw
 3. Hamid Ansari @ Abdul Hamid Ansari, son of
 Late Abdul Rahim Ansari
 All resident of Chhattabad, P.O. & P.S. Katran
 Dist. Dhanbad

..... Petitioners

-Versus -

The State of Jharkhand

..... Opposite Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

.....

For the Petitioners : Ms. Jasvinder Mazumdar, Advocate
 For the Opp. Party State : Mr. Shiv Shankar Kumar, Advocate

Through Video Conferencing

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6/ 06.09.2021 Heard Ms. Jasvinder Mazumdar, learned counsel appearing on behalf of the petitioners.

2. Heard Mr. Shiv Shankar Kumar, learned counsel appearing on behalf of opposite party-State.

3. This criminal revision is directed against the judgment dated 29.5.2012 passed by learned Sessions Judge, Bokaro in Cr. Appeal No. 20 of 2012, arising out of G.R. Case No. 1518 of 2007 (T.R. NO. 95 of 2012), whereby the learned Sessions Judge has affirmed the judgment of conviction and order of sentence dated 12th January, 2012 passed by learned Judicial Magistrate, 1st Class, Bokaro in G.R. Case No. 1518 of 2007, corresponding to T.R. No. 95 of 2012. Learned Judicial Magistrate, 1st Class, Bokaro has convicted the petitioners under Sections 414 and 120B of the Indian Penal Code and sentenced them to undergo R.I. for 2 years under Section 414 I.P.C. and fine of Rs. 3,000/- each and in default of payment of fine, further directed the petitioners to undergo simple imprisonment for 3 months. The learned trial court has also passed sentence under Section 120B IPC against all the accused persons to undergo R.I. for one year. All the sentences have been directed to run concurrently.

Arguments of the petitioners

4. Learned counsel for the petitioners, while assailing the impugned judgments, submits that there are three petitioners before this Court, who have been convicted for offence under Section 414 of the Indian Penal code and have been punished for two years rigorous imprisonment with fine of Rs. 3,000/- each with default clause. They have also been convicted for offence under Section 120-B of IPC for a period of rigorous imprisonment of one year. She submits that on the spot, petitioner Nos.-2 and 3 who were the driver and khalasi respectively, were arrested and the petitioner No.-1 has been made accused on account of the fact that the seized goods and vehicle belonged to him. She submits that seizure witnesses have not been examined before the learned court below and accordingly, seizure has not been proved. She also submits that there were altogether four prosecution witnesses; out of them, three were the members of the raiding party and fourth one was the Investigating Officer of the case (P.W.-3). She submits that the petitioner No.-1 had produced certain documents as Ext.-A, B and C to show that the goods were purchased and were being transported by way of sale. It has also come in evidence that the petitioner No.-1 was having a factory. The learned counsel has also submitted that there is no corresponding theft report and in absence of theft report, the conviction of the petitioners under Section 414 of IPC is *ex-facie* perverse and cannot be sustained in the eyes of law.

Arguments of the opposite party-State

5. The learned counsel for the opposite party-State, while opposing the prayer, has submitted that the petitioner No.-1 did not have any license to deal with the metal brass, which was seized and even if, the document produced by the petitioner No.-1 is taken into consideration, 100 Kgs of brass scrap remained unaccounted. He submits that Ext.-A and C were marked with objection. He also submits that it was the case of the defence that the goods were sold to one Bishwanath Halidar, but said Bishwanath Halidar has not been examined before the learned court below. He has also submitted merely because there is no theft report,

the same does not make the impugned judgments perverse. He has also submitted that so far as the seizure witnesses are concerned, their non-examination is not fatal, as the other witnesses have fully supported the seizure and also the arrest of petitioner Nos. 2 and 3 on the spot. The learned counsel, at the end, submits that there is no illegality of perversity in the impugned judgments passed by the learned courts below calling for any interference in the present case.

Findings of the Court

6. As per the prosecution case, the informant ASI namely Shashi Bhusan Choudhary has given written report before police stating that on 27.10.2007, he received secret information by telephonic message that one sumo victa bearing no. JH10 K8488 was coming towards Dhanbad and carrying theft coper wire and brass scrap running towards Purulia. On the basis of the secret information, Sanha entry was made and ASI Basudev Topo, ASI Satyanarayan Prasad and police force, Hawaldar Sultan Ansari no.888, Anuranjan no.1149, Ujwal Mahto no.969, Otho Pradeep 671, Akhileshwar Badaeek and driver of the jeep bearing no.BR 20 B 3498 driver Kapileshwer Singh proceeded towards the place of occurrence. When they reached near Sangaldih, the aforesaid vehicle was found going towards Purulia speedily and when they tried to stop the vehicle, it fled away towards Purulia. Thereafter the vehicle was chased and stopped in Pindrajora bazaar near Tiwary hotel and altogether 6 bags, full of copper wire and bras scrap, which belonged to Asarfi Kasera and Manoj Kasera, who were residents of Dhanbad were seized. The apprehended persons disclosed their name as Abdul Hamid and Bhola Sao. Upon seeing the police personnel, Suryakant Singh Choudhary and Vivekanand Banerjee came on the spot and in presence of these two independent witnesses, one bag kept in front of seat and three bags in the middle of the vehicle and two bags at the back seat were seized. The driver of the vehicle told that they have always been carrying illegal copper wire to Purulia and at Purulia in of Bhopal Singh garage, Vishwanath Haldar

received all the bags. In presence of these two witnesses, weighing of 200 KG of copper wire along with 200 KG of brass scrap were found and in total 400 KG of metal scrap of copper and brass were seized. The driver of the vehicle did not produce any chit of paper and disclosed the owner, namely Asarfi Kasera, who purchased theft materials from BCCL and other places and collected to Dhanbad and then sent to Purulia. The seizure list was prepared and one was handed over to Abdual Hamid, in which, he put his signature. Both the apprehended persons disclosed that the seized vehicle belonged to Manoj Kasera and Asarfi Kasera and Asrafi Kasera was loading and sending to Maa Tara Material Industry and the owner of Maa Tara Industry was Vishwanath Haldhar.

7. On the basis of the written report, the case was registered and charge-sheet was submitted by the police under Sections 414/ 120B/34 of the IPC and cognizance was also taken under the aforesaid sections and charges were framed and read over to the accused facing trial, to which, they pleaded not guilty and claimed to be tried.

8. At the stage of prosecution evidences, altogether four witnesses were examined and the investigating officer of the case was not examined. The prosecution witnesses proved Ext.-1 written report; Ext.-1/1 endorsement of written report; Ext-2 Seizure list; Ext.-3 confessional statement of accused Manoj Kasera; Ext.-4 memo of arrest of accused Hamid Ansari and memo of arrest of accused Bholi Sao. The defence did not lead any oral evidence, but filing documents were exhibited from the side of the defence, which are Ext-A, the original purchased bill dated. 10.09.2007, marked with objection, Ext- B, the original purchased bill dated 17.09.2007 and Ext.-C, the original sale deed dated 27.10.2007, marked with objection.

9. PW – 1 was the member of raiding party and he supported the manner of occurrence and also identified the accused persons. He has been cross-examined and suggestion was given to him that the seized articles were purchased by the

accused persons namely Manoj Kasera from Maa Tara Metal Industry, Bhupad Traders and Ganpat Metal. PW – 2 was also the member of the raiding party and he fully supported the prosecution case and claimed to identify the accused persons. PW – 3 was the informant of the case, who has fully supported the written report and also disclosed the manner, in which, the vehicle Tata Sumo was seized with loaded scrap of copper and brass. He also deposed that at that time, the driver of Tata Sumo did not show any paper regarding the seized articles. PW – 4 was also the member of raiding party, who has supported the prosecution case and identified the accused persons. These witnesses have been fully cross-examined from the side of defence and supplementary charge-sheet was submitted by these witnesses under Sections 414/120B of the IPC.

10. The learned trial court found that the oral and documentary evidences have proved the case of prosecution and the defence has not denied the seizure of articles recovered from the accused persons, rather the accused person namely Manoj Kasera has adduced evidence as defence and claimed that the seized material belonged to him and also filed Exts. A, B & C in support of his claim. Thus it was not in dispute that 200 KG of copper wire and along with scrap and 200 KG brass scrap were recovered from the possession of the accused persons.

11. The learned trial court scrutinized the defence documents and was of the view that the claim of the accused persons Manoj Kasera was falsified by his own documents. The learned trial court recorded that Ext. A showed that 300 KG copper wire was purchased by Manoj Kasera, Ext. B showed that only 100 KG of brass was purchased by him and Ext. C showed that only 200 KG copper wire scrap and 200 Kg brass scrap were sold. Learned Trial Court recorded that purchase of only 100 KG of brass scrap was shown and sale of 200 KG brass scrap was claimed and purchase of 300 KG of copper wire was shown and sale of 200 KG of copper wire was shown. Thus, it was held that the accused persons have not been able to disclosed the difference of 100 KG brass scrap

recovered from the possession of the accused. The learned trial court held that Exts. A, B & C were forged and fabricated and not tallied with seized copper scraps and brass scraps and the trial court also recorded that the accused persons were involved in conspiracy to commit these offences. Considering the aforesaid facts and materials on record, learned trial court ultimately convicted the accused persons for the offence under Sections 414/120B of IPC and sentenced them accordingly.

12. At the appellate stage, the appellate court also scrutinized the materials on record and also considered the cross-examination of PW – 3, who had stated that after taking the charge of investigation, he conducted raid on 12.02.2008 and 27.03.2008 in the house of Manoj Kasera and Asarfi Lal Kashera and both of them were arrested and no license was produced regarding trading in brass scraps and during investigation, he came to know that Manoj Kashera was proprietor of Maa Tara Metal Industry dealing in manufacturing of copper wire. The supplementary charge-sheet was submitted against Manoj Kashera and Ashrafit Lal Kashera. The learned appellate court scrutinized the evidences on record and carefully considered the defence exhibits in particular, i.e. Exts. A, B & C and recorded as follows:

“Through Ext. A and B, the appellants / accused persons claimed to be bonafide purchasers of the scrap and through Extc. C the seized articles are invoice of sale to Bishwanath Halder were the consignment was purportedly being supplied. These documents have been produced much later to the seizure during trial at the time of defence evidence. These cannot be accepted for the reason that firstly after the seizure and arrest no valid document was produced by the appellants. In normal circumstances commercial goods are transported with valid papers of its challan, invoice, tax payment receipts. It was incumbent on the persons who were apprehended on spot, to produce the documents at the time of the seizure. The production of the invoice at a belated stage are an indication of it being manufactured. Secondly, the proprietor namely Maa Tara Metal Industry absconded after the seizure and did not come forward with all these documents after the incident. Thirdly, there are discrepancies in the invoice which do not fully explain the total

seized goods. Exhibit A & B do not explain the purchase of 100 KG brass scrap.

13. The learned appellate court also consider the conduct of the accused which amounted to admission as one of the incriminating circumstances was no explanation was put forward on behalf of the defence regarding absconding and delay in production of the documents. The learned appellate court recorded that accused Bhola Sao and Hamid Ansari were apprehended on the spot with copper and brass scrap kept in the Bolero jeep and they attempted to escape, but they were intercepted by the police party on chase and no document could be produced by them with regard to the seized articles at the time of being apprehended and later documents purported to be invoice of the seized consignment was produced and exhibited during trial. These documents were also exhibited during the trial and the production of the documents at belated stage could not fully explain the seized articles. So far as Abdul Ansari is concerned, he was found to be driver of the vehicle and Bhola Sao was on the jeep and nothing more was brought against these two persons. The learned appellate court was of the view that the prosecution has been able to prove the case under Section 414 IPC against Bhola Sao and Hamid Ansari @ Abdul Hamid Ansari. So far as other two persons namely Manoj Kasera and Ashrfi Kasera are concerned, learned appellate court recorded that it was established that the vehicle from whom stolen scraps were seized, belonged to Manoj Kasera, who had produced the documents to show that he was the bonafide purchaser of the seized materials, which was being transported to Bishwanath Halidar, to whom it was sold. The learned appellate court found that the prosecution had succeeded to prove the constructive possession of the seized articles from whose seized vehicle against Manoj Kasera. It was recorded that the possession has not been denied and claim over the seized articles was made, but the claim was not supported by valid papers and found that the charge was proved against Manoj Kasera for offence under Section 414 of IPC. So far as

Asarfi Lal Kasera is concerned, learned appellate court recorded that nothing was seized from his possession nor the vehicle from which the stolen articles were seized belonged to him and the statement of co-accused made before the police could not be relied upon to convict him. In such circumstances, learned appellate court set-aside the conviction of Asharfi Lal Kasera and allowed the appeal preferred by him. Thus, the appellate court dismissed the appeal filed by Manoj Kumar Kasera, Bishwanth Haldhar and Hamid Ansari.

14. This Court finds that the learned courts below have scrutinized the materials on record and have convicted the present petitioners by recording the concurrent findings against them. This Court is also of the view that the petitioner Manoj Kumar Kasera was the owner of the vehicle from where the copper wires/scrap and scrap brass were seized weighing total of 400 KGs and he claimed the seized articles and tried to substantiate the same by documentary evidences as Exts. A, B & C to show that the same were purchased by him and was sold to Bishwanath Haldar. However, the Exts. A, B & C were disbelieved by both the courts below by citing reasons not only on delay in production of such documents but also that even if these documents were accepted as valid, the same did not fully explained the purchase and sale of seized articles. Further the conduct of Manoj Kumar Kasera was also taken into account to disbelieve his explanation regarding the seized articles. So far as petitioner No.2 Bholu Sao and petitioner No.3 Hamid Ansari are concerned, it was not in dispute that the goods were seized from their possession while they were in the vehicle, and the vehicle was belonging to Manoj Kumar Kasera. The conduct these two persons were also taken into consideration. When the police party approached them, they ran away and they were apprehended upon chase and when the goods were found in the vehicle there was no documents much less any valid documents in connection with the seized goods.

15. So far as the argument of the petitioner that in absence of a theft report, no prosecution under Section 414 of Indian Penal Code could have been made, the same is also fit to be rejected. Section 414 and 26 of Indian Penal Code read as under:

“26. “Reason to believe”- A person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.

414. Assisting in concealment of stolen property- Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

16. The basic ingredients of Section 414 of IPC are as follows:

- (i) That the property in question is a stolen property,
- (ii) The accused assisted in concealing or disposing of or making away with such property,
- (iii) He did the act under (ii) voluntarily, and
- (iv) He knew or had reason to believe that the property was stolen property.

This Court is of the considered view that in order to establish an offence under Section 414, it is not necessary to establish the person from whom theft is committed, when it was committed, how it was committed and who committed it. It has been held by the Hon’ble Supreme Court in the judgment reported in **AIR 1964 SC 170** that Section 414 of Indian Penal Code makes it an offence for a person to assist voluntarily in stealing or disposing of or making away with property, which he knows or has reason to believe to be a stolen property. It is not necessary for a person to be convicted under Section 414 of Indian Penal Code that another person must be traced out and convicted for an offence of committing theft. The prosecution has simply to establish that the property recovered is a stolen property and the accused provided help in its concealment and disposal.

17. This Court is of the considered view that in the facts and circumstances of this case, there are sufficient materials on record and sufficient circumstances to convict the petitioners under Section 414 of Indian Penal Code, even if no theft report in connection with the seized goods was ever exhibited before the learned court below.

18. Considering the aforesaid facts and circumstances of the case, this Court finds that the conviction of the petitioner under Section 414 / 120 IPC is supported by evidence on record. There is no illegality or perversity or material irregularity in the impugned Judgments of conviction and accordingly the same do not call for any interference. The impugned judgements convicting the petitioners are well reasoned judgements which do not call for any interference in revisional jurisdiction.

19. There is no merit in this revision application and the same is accordingly dismissed.

20. Interim order, if any, stands vacated.

21. Bail bond furnished by the petitioner is cancelled.

22. Pending interlocutory application, if any, is dismissed as not pressed.

23. Office is directed to send back the lower court records to the court concerned.

24. Let this order be communicated to the learned court below through FAX/E-mail.

(Anubha Rawat Choudhary, J.)