

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.86 of 2017

Laxminder Chakma,
Son of Shri Bishnu Chakma,
Village : Birchandra Manu, Panchayat Para
P.S: Santir Bazar
District: Gomati Tripura

.....**Petitioner(s)**

Versus

The State of Tripura

.....**Respondent(s)**

For the Petitioner(s)	:	Mr. B.N.Majumder, Adv.
For the Respondent(s)	:	Mr. S.Debnath, Addl.PP.
Date of Judgment & Order	:	29.01.2021
Whether fit for reporting	:	No.

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Judgment & Order(Oral)

[1] The petitioner has challenged the judgment and order dated 02.11.2017 delivered by the Addl. Sessions Judge, Gomati Judicial District at Udaipur in Criminal Appeal No.06 (01) of 2017 affirming the judgment and order of conviction and sentence of the petitioner under Section 411 of the Indian Penal Code (IPC, hereunder)

[2] The brief facts of the case are as under:

Shri Adibashi Jamatia, son of late Abhichandra Jamatia of village : Atharobhola under Killa Police Station, Udaipur lodged a written complaint with the Officer-in-Charge of Killa Police Station on 27.10.2014 at about 8 O'clock in the morning alleging that 02 cows were stolen from his house at around 12 O'clock in the night on 26.10.2014 and he could not find out his cows despite making an extensive search in the neighbourhood. He, therefore, urged the Officer-in-Charge of the police station for recovery of his cows.

[3] Based on his FIR, Killa P.S. Case No. 32 of 2014 under Section 380 IPC was registered on 27th October, 2014 and investigation of the case was taken up. When the investigation of the case was in progress at Killa police station, Shri Pradip Kumar Shil, a Sub-Inspector of Police of Jatrapur police station received an information from his source that the night guards of the area called Luddhamura at Jatrapur and the local residents had detained a Bolero vehicle bearing registration No.TR-03-D-1795 in which the stolen cows were being carried by the petitioner namely Laxmindar Chakma along with accused Md. Sangsar Ali and Md.

Iqbal Hossain. The police officer rushed to the place and detained the vehicle and seized the cows by a seizure list dated 27.10.2014[**Exbt.2/3**]. After recovery and seizure of the cows and the vehicle in which they were being carried, the police officer informed the Officer-in-Charge of Killa Police Station [**PW-21**] about the recovery and seizure of the cows. Pursuant to such information the Officer-in-Charge of Killa Police Station immediately rushed to Jatrapur Police Station along with the informant owner of the cows from where he recovered the cows and further seized the vehicle as well as the stolen cows. Thereafter, the Investigating Officer recorded the statement of the material witnesses of the case and at the conclusion of his investigation, he submitted charge sheet No.22 of 2014 dated 20.11.2014 against the 03 accused namely Laxmindar Chakma, Md. Sangsar Ali and Md. Iqbal Hossain for offence punishable under Sections 380 and 411 of the IPC and Sections 181,190A and 196 of the Motor Vehicles Act, 1988. Having received the Charge Sheet, the learned Chief Judicial Magistrate took cognizance of offence punishable under Sections 380 and 411 IPC vide order dated 17.12.2014 and the trial

commenced against the 03 accused with the framing of charge against them under Sections 380 read with Section 34 IPC and Section 411 read with Section 34 IPC. The charges framed by the learned trial court against accused persons are as follows:

"Firstly- That all of you on 26-27.10.2014 at night at about 2400 hours at any time at Atharobhola in the house of the informant Sri Adibashi Kr.Jamatia under Killa P.S with common intention stolen away two cattle from the cowshed of the complainant and thus thereby all of you have committed an offence punishable U/S. 380 read with Section 34 of IPC and within the cognizance of the court.

Lastly- That on 27.10.2014 at night at the Jatrapur P.S. under Sepahijala District all of you are detained with the said two cattle and with common intention all of you received the said cattle knowing the same are stolen cattle or having reason to believe that the same are stolen and thus thereby all of you have committed an offence punishable U/S.411 read with Section 34 of IPC and within the cognizance of the Court.

And, I do hereby direct that you be tried on the said charges by this court."

[4] During trial, accused Md. Iqbal Hossain jumped bail and absconded. Therefore, the trial proceeded against the present petitioner namely Laxminder Chakma and another accused namely Md. Sangsar Ali.

[5] During trial, prosecution examined as many as 21 witnesses [**PW-1 to PW-21**] including the informant and the Investigating Police Officer. Besides adducing the ocular testimony of the prosecution witnesses, as many as 10 exhibits [**Exhibit-1-Exhibit 10**] were also introduced by the prosecution.

[6] At the end of the prosecution evidence the petitioners were examined under Section 313 Cr.P.C. and their statements were recorded in which they pleaded innocence and claimed that the charges were foisted on them.

[7] On appreciation of evidence, the learned Chief Judicial Magistrate, Gomati Judicial District, Udaipur vide judgment and order dated 03.12.2016 delivered in Case No.PRC(WP)245 of 2014 found the petitioner and the other accused guilty of either Section 380 IPC or Section 411 and convicted them for the said offence and after hearing the convicts on sentence awarded sentence of Rigorous Imprisonment[RI] for 01 year for offence punishable under Section 411 IPC on both of them. One of the convicts namely Laxminder Chakma, the petitioner herein, preferred appeal in the court of learned Sessions Judge, Gomati

Judicial District at Udaipur. The learned Addl. Sessions Judge Gomati Judicial District, Udaipur heard the matter and by the impugned judgment set aside the appeal affirming the judgment and order of conviction and sentence passed by the learned trial court. Hence, this Criminal Revision Petition.

[8] Heard Mr. B.N.Majumder, learned counsel appearing for the revision petitioner as well Mr. S.Debnath, learned Addl. PP appearing for the State respondent.

[9] Appearing for the convict petitioner, Mr. B.N.Majumder, learned counsel, submits that the learned trial court did not take note of the essential elements of Section 411 IPC while convicting the accused petitioner for the said offence and as such the conviction of the petitioner was totally erroneous which was also erroneously upheld by the learned Addl. Sessions Judge in appeal by the impugned judgment. Further contention of Mr.Majumder, learned counsel is that the conviction of the petitioner under Section 411 IPC is liable to be set aside because there is no proof against him that he dishonestly retained the stolen cows knowing or having

reason to believe that those were stolen property. Therefore, the conviction of the petitioner under Section 411 IPC is not sustainable.

[10] Submission on behalf of the prosecution on the other hand is that there is clear and consistent evidence against the petitioner with regard to his involvement in the alleged offence and the judgment of the learned trial court is based on proper appreciation of evidence which has been upheld by the learned appellate court. According to Mr. Debnath, learned Addl. PP the concurrent findings of the courts below do not call for any interference in appeal.

[11] As noted, the prosecution has examined as many as 21 witnesses in this case. Among them **PW-1** is Siddik Miah, a resident of Luddhamura under Jatrapur Police Station. The PW stated at the trial that at about 3.30 a.m he was returning home after performing guard duty in Bashpukur bazar in Luddhamura when he noticed that a canter truck was carrying 02 cows and along with the 03 accused of this case including the present petitioner. On query, the accused persons told him that they purchased both the cows from Udaipur. Since they

failed to provide the particulars of the owner of those cows, the PW suspected them and with the assistance of the neighboring people he brought them to Jatrapur Police Station along with the vehicle where they were arrested by police.

In his cross examination, the PW denied the suggestion of the defence that all the 03 accused told the PW that they purchased the cows from Udaipur. The PW was asked about the contents of the seizure list signed by him. He said that he was not aware of the contents of the seizure list.

[12] **PW-2**, Billal Miah gave similar evidence. He was also returning home at Luddhamura along with PW-1 and others at about 3.30 a.m in the morning after performing guard duty in the market and on the way he saw a Bolero mini truck carrying 02 cows. The 03 FIR named accused of this case were also found in the truck. On query, they told the witnesses that they had purchased the said cows. But they could not give the particulars of the owner. Therefore, the PW along with PW-1 and the accompanying people detained them and brought them to Jatrapur police station where they

admitted that they had stolen the cows from Udaipur. Thereafter, police seized their vehicle along with the stolen cows. In his cross examination, suggestion was given to him on behalf of the accused that the accused persons never admitted that they had stolen the cows from Udaipur and a false case was instituted against them. It was denied by the PW. The PW, however, stated in cross that he could not say actually from where the vehicle came.

[13] **PW-3**, Abul Kalam supported the evidence of PW-1 and PW-2. He was also returning from Luddhamura market after performing guard duty along with PW-1 and PW-2. On the way he spotted the accused persons carrying the cows in the canter truck and the 03 accused having failed to deliver the name of the owner of the cows, the PW suspected them and brought them to police station where they admitted that they had stolen the cows. The accused persons were then taken to the house of Billal Miah along with the vehicle from where they were arrested by police and the vehicle in which they were travelling and carrying the cows was also seized. In cross examination, the PW stated that he had no idea about the

occupation of the accused persons and he could not say actually from where they were coming. He further stated in cross examination that he was not aware of the contents of the seizure list which was signed by him.

[14] **PW-4**, Prantosh Chandra Paul was a police staff at Jatrapur police station at the material time. In his presence, the Officer-in-Charge of Jatrapur police station handed over the vehicle and the 02 stolen cows to the officer-in-charge of Killa police station. In cross examination, the PW stated that a seizure list was signed by him but he was not aware of the contents of that seizure list.

[15] **PW-5** is Abdul Karim Kazi. He stated in his examination-in-chief that he owned the vehicle bearing registration No. TR-03-D-1795 which was seized in connection with this case. The PW did not tell the name of the driver of his vehicle during his examination in chief. He stated that he could not say who drove his vehicle on the material date. As a result he was declared hostile to prosecution and he was cross examined by the prosecution lawyer. Nothing could be extracted from the PW in favour of the prosecution. In his cross examination

he stated that he actually handed over his vehicle to the local syndicate and he had no knowledge as to who drove his vehicle on the material date. He further stated that there was no permanent driver of his vehicle.

[16] **PW-6**, Kajal Chandra Dey, a Tehashildar by occupation issued a certificate in favour of the informant which was produced during trial on behalf of the prosecution and the document was marked as Exhibit-3. The certificate contained that the plot of land in Dag No.4235 at Bagma Mouja recorded in Khatian No.1/80 was in the possession of the informant namely Adibashi Kumar Jamatia.

[17] **PW-7**, Tarun Datta deposed that Exhibit-3, the certificate issued by PW-6 with regard to the possession of land in plot in Dag no. 4235 at Bagma Mouja was seized by police in his presence. In cross examination the PW stated that he could not say as to why such certificate issued by PW-6 was seized by police.

[18] **PW-8** is the informant. He stated at the trial that 02 cows were stolen from his house. He could not say who committed the theft. According to him he had

seen the accused persons at the police station. He was not sure as to whether they committed the theft of his cows. In his cross examination the PW stated that he was not aware exactly where the accused persons were detained with his cows. He denied that he had already sold his cows to someone else.

[19] **PW-9** Tabdul Hosen who lived in the same village with the informant stated that he had written the FIR. During trial he identified the FIR which was marked as Exhibit -4/1.

[20] **PW-10** Mahila Kumar Jamatia was a police constable at Killa Police Station on 27.10.2014 when the alleged occurrence took place. He stated that in his presence one Manik Lal Nandi, Sub-Inspector of police seized 02 cows at the police station and prepared seizure list. According to him, after seizure, the cows and the vehicle in which those were being carried were released in favour of their respective owner. In his cross examination he stated that on 27.10.2014 he accompanied SI, Manik Lal Nandi to Jatrapur police station from where the vehicle and the cows were seized.

The PW further stated that he was not aware of the contents of the seizure list.

[21] **PW-11**, Rajesh Saha was posted as a constable at Jatrapur police station on 27.10.2014. He stated that in the morning, he accompanied SI Pradip Kumar Shil of Jatrapur police station to Luddhamura where the villagers detained 03 persons along with a vehicle and 02 cows. According to the PW, during interrogation by police they admitted that they had committed theft of the cows from a house of Atharobhola. In his cross examination he stated that police did not examine him during the investigation of the case. He also stated that he could not remember the face of the accused whom he saw in detention at Luddhamura on the material date.

[22] **PW-12**, Ajoy Krishna Bakshi was also posted at Jatrapur police station as a constable of police on the same day who gave same evidence. According to him the 03 accused along with the vehicle and the stolen cows were detained by the local people at Luddhamura and during police interrogation they admitted that they had

stolen the cows from Atharobhola and brought the cows in their vehicle from there.

[23] **PW-13** was a Special Police Officer at Jatrapur police station on 27.10.2014. He also supported the fact that on 27.10.2014 the 03 accused of this case were arrested at Luddhamura under Jatrapur police station along with their vehicle and 02 stolen cows and the 03 accused admitted that they had stolen the cows from a house at Atharobhola.

[24] **PW-14** did not witness the occurrence. He came to know about the occurrence after the accused persons were arrested by police along with their vehicle and the stolen cows.

[25] **PW-15**, ASI Dhruba Ranjan Guha was a duty officer at Jatrapur police station on 27.10.2014 in the morning at about 4.20 a.m. He received a telephonic information from Luddhamura that 03 persons were detained with 02 cows and a vehicle by the local residents at Luddhamura. The PW recorded the information in the GD in police station vide GDE No.909 dated 27.10.2014 and following the information SI Pradip

Kumar Shil went to the spot. The PW did not tell anything more about the case.

[26] **PW-16**, Smt. Usharani Jamatia is the wife of the first informant. She had stated that 02 cows stolen from their house were recovered by police along with the thieves. Thereafter, her husband brought back the cows from the police station. She stated in her cross examination that she did not see the cows being stolen away from her house and therefore, she was not aware actually who had stolen the cows.

[27] **PW-17**, Usha Kr. Jamatia, son of the informant also gave the same evidence. He had stated at the trial that 02 cows were stolen from their house about 1 & ½ years back. Later, police recovered the cows and caught the thieves. His father then brought back the cows home from the police station. In cross examination, the PW stated that he could not say actually who had stolen the cows.

[28] **PW-18**, Hari Mohan Jamatia is also a neighbor of the informant. The PW stated in his examination in chief that he heard from the informant that his cows were

missing. The informant also told the PW that he searched for his cows but he could not find out the cows. The PW further stated in his examination in chief that he could not say how the cows were later recovered. He was then declared hostile to prosecution and cross examined by the prosecution lawyer. But nothing could be extracted from him in favour of the prosecution during such cross examination.

[29] **PW-20**, Pradip Kumar Shil is the Sub-Inspector of police who was posted at Jatrapur police station on 27.10.2014. He stated in his examination in chief that at about 4.25 a.m on 27.10.2014 he arrived at Luddhamura pursuant to an information received from the local residents and saw that the 03 accused of this case along with a Bolero vehicle and 02 cows were detained by the local residents. He immediately seized the vehicle. The 03 accused admitted that they had stolen the cows from Atharobhola. The PW then arrested the accused persons.

[30] **PW-21** Manik Lal Nandi was the officer in charge of Killa Police Station on 27.10.2014. He received the FIR at the police station and took up the investigation

of the case himself. According to him, the charges against the accused persons were established during the investigation of the case and therefore, he submitted the charge sheet for commission of theft against the 03 accused of this case.

[31] The crux of the allegations against the petitioner is that the stolen cows of the informant was recovered from his possession for which he was convicted and sentenced by the learned trial Judge under Section 411 IPC which was also upheld by the learned appellate court. There is no doubt that the prosecution led consistent evidence to prove the fact that the stolen cows were recovered from the possession of the FIR named accused persons including the present petitioner. The question which needs to be decided in this Criminal Revision Petition is whether the conviction and sentence of the petitioner under Section 411 IPC is sustainable merely on the proof that the stolen cows were recovered from his possession.

[32] Learned counsel of the petitioner has vehemently argued that the basic ingredients of Section 411 IPC have not been proved in this case and therefore,

conviction and sentence of the petitioner under Section 411 is liable to be set aside. It would be apposite to reproduce Section 411 IPC at this stage which reads as under:

"411. Dishonestly receiving stolen property.

—Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same 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."

[33] "Stolen property" appearing in Section 411 IPC has been defined under Section 410 IPC which reads as under:

"410. Stolen property.—Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which ⁴¹⁰[***] criminal breach of trust has been committed, is designated as "stolen property", ⁴¹¹[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without ⁴¹²[India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property."

[34] From a bare reading of Section 410 IPC, it appears that a property can be termed as stolen property for the purpose of Section 410 IPC when possession of the property is transferred by theft, extortion, robbery,

dacoity or criminal breach of trust or which is obtained under misappropriation.

[35] Section 411 IPC provides for punishment to the person who dishonestly receives such stolen property. A close perusal of Section 411 IPC would show that to prove the charge under Section 411 IPC, prosecution has to prove the fact that the person from whose possession the stolen property is recovered has received the same dishonestly with full knowledge or having reasons to believe that it is a stolen property.

[36] In this regard, the Apex Court in **Trimbak vs. State of Madhya Pradesh** reported in **AIR 1954 SC 39** held as under:

"5. It is the duty of the prosecution in order to bring home the guilt of a person under Section 411, I.P.C. to prove,

(1) that the stolen property was in the possession of the accused,

(2) that some person other than the accused had possession of the property before the accused got possession of it, and

(3) that the accused had knowledge that the property was stolen property.
....."

[37] In **Chandmal and Another. vs State of Rajasthan** reported in **(1976) 1 SCC 621**, the Apex Court

held that the sine qua non for a charge under Section 411 IPC is that the property found from the possession of the accused must be proved to be stolen property as defined in Section 410 IPC.

[38] Further, in **Mir Nagvi Askari vs. Central Bureau of Investigation** reported in **(2009) 15 SCC 643**, the Apex Court has held that Section 411 IPC as also the succeeding Sections are directed not against the principle offender e.g. a thief, robber or misappropriator but against the persons who trade in stolen articles and are receivers of stolen property. Observation of the Hon'ble Apex Court vide paragraph 181, 182 and 183 of the Judgment are as under:

"181. Section 411 provides punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property. We must bear in mind that A3 had entered into a criminal conspiracy with A1, A2 and A4. He would in that respect be deemed to have known that the property in question was stolen property. This section as also the succeeding sections are directed not against the principal offender e.g. a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore outside the scope of this section. Accordingly the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this section. However in the present case the principal offender i.e. A1, A2 and A4 have been held guilty of a 'criminal breach of trust'

therefore, the conviction of A3 would be even more clearly established from the facts and circumstances of the present case.

182. It must be noted in this respect that this section requires two essentials:

a) Dishonest receipt or retention of stolen property.

b) Knowledge or reason to believe at the time of receipt that the property was obtained in the ways specified in the section.

The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it.

183. It is the duty of the prosecution in order to bring home the guilt of a person under Section 411 to prove:

(1) that the stolen property was in the possession of the accused.

(2) That some person other than the accused had possession of the property before the accused got possession of it and

(3) That the accused had knowledge that the property was stolen.

.....”

[39] In the case in hand, prosecution evidence on record demonstrates that the petitioner was prosecuted merely on the basis his possession of the stolen cows. No evidence has been led by the prosecution to prove the fact that the petitioner had knowledge or reasons to believe that the cows were stolen property. There is no

evidence against the petitioner that he committed theft of the cows.

[40] The investigating officer did not also try to ascertain as to how the stolen cows reached the petitioner who lived at a place far away from the house of the informant. He did not also verify the antecedents of the petitioner to ascertain as to whether he had any criminal antecedent or whether he was in any manner associated with cow lifting. Evidently petitioner claimed that he purchased the cows. No investigation was done to verify the veracity of his claim.

[41] As discussed above, mere proof of possession of the stolen property is not enough to establish the charge of offence punishable under Section 411 IPC. The judgments of the courts below demonstrate that the petitioner has been convicted and sentenced merely on the proof of his possession of the stolen cows without any proof of the basic ingredients of Section 411, IPC. In these circumstances, the conviction and sentence of the petitioner cannot be upheld.

Resultantly, the impugned judgment and order of the learned Additional Sessions Judge is set aside and the criminal revision petition is allowed.

Send back the LCR.

JUDGE

Saikat Sarma, P.A

