

Chani Vs. the State

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Court : Punjab and Haryana

Decided On : Feb-12-1965

Reported in : 1965CriLJ699

Judge : J.S. Bedi, J.

Appellant : Chani

Respondent : The State

Judgement :

ORDER

J.S. Bedi, J.

1. The facts giving rise to this revision are briefly as under.

On 8th of September 1961 the shop of Lachhraan Dass situated in Moga was broken into from where an amplifier, a gramophone machine and about half a dozen gramophone records were stolen. Then again, on 1st of January 1962 the shop of Dasondhi Ham P. W. situated in Moga Mandi was broken into from where gold clips (Exhibit P. 4) and gold dandis (Exhibit P. 3) were removed. These ornaments respectively were pawned by Mohinder Singh P. W. and Karam Singh P. W. for Rs. 130 and Rs. 200 with Dasondhi Ram, vide relevant entries in the bahi. Lachhman Das and Dasondhi Ram lodged reports at the Police Station soon after the occurrence.

2. On 1st of July 1962 the petitioner, who is resident of village Bhadaur in district Barnala, was taken into custody by the Police of police-station Mahal Kalan when the petitioner was found going leading two bullocks. The bullocks were suspected to be stolen property, The petitioner was interrogated by Sukhdarshan Lekhi on 2nd of July 1982 in the presence of Rinjit Singh, Kartar Singh and Natha Singh when he disclosed that he had sold the ornaments in question to Udhe Chand and Nikka Singh P. Ws. and that he could get the same recovered from them Ha then led the investigating party to that place and in the presence of Kartar Singh and Natha Singh got the ornaments recovered along with relevant entries made in the bahi. These entries in the bahi were thumb marked by the petitioner. They were sent to the hand-writing expert who was of the view that the thumb impressions in question tallied with the thumb impressions of the petitioner which were taken later on before a Magistrate. The petitioner on the above allegations was sent up for trial under Section 411' Indian Penal Code. Ha was convicted by Shri S. N. Goel, Magistrate 1st Class, Moga, vide his order dated 28th November, 1983 under Section 411, Indian Penal Code, in respect of the recovery of the ornaments above-mentioned. He was, however acquitted in respect of the recoveries of the articles alleged to belong to Lachhman Dass. The petitioner was sentenced to rigorous imprisonment for six months. He went up in appeal in the Court of Session and the appeal was dismissed by the Additional Sessions Judge, Ferozepore, vide his order dated 25th April, 1964 and it is against this order that the petitioner has come to this Court in revision.

3. The petitioner, when examined under Section 342 of the Code of Criminal Procedure denied the allegations against him. He, however, admitted his thumb impressions on the entries in the bahi above mentioned, but added that those were obtained from him by force. He, however, led no evidence in defence.

4. The only point raised by the petitioner's learned Counsel before me was that the officer who had interrogated the petitioner, as a result of which the disclosure statement was made by him, had not : been examined by the police and, therefore the disclosure statement in this case cannot be taken into consideration. In support of his contention he cited two cases namely, Public Prosecutor v. Venkata Reddy AIR 1945 Mad 202 and Public Prosecutor v. Indian China Lingiah :

AIR1954 Mad433 . But these authorities have no relevancy to the point raised. This argument, it appears was raised before the learned Additional Sessions Judge also and he had rightly rejected it holding that the disclosure statement was made in the presence of Ranjit Singh and Kartar Singh besides the investigating officer and although it would have been better if the investigating Officer was examined, but for one reason; or the other his presence could not be secured. The prosecution evidence was closed by the Magistrate himself. He also observed that although Kartar Singh was one of the witnesses of the disclosure statement, but through an omission the Public Prosecutor who was conducting the case in the lower court had not examined Kirtar Singh on that point. He however, relied on the statement of Ranjit Singh, who was said to be an entirely disinterested person, and relying on the disclosure statement thus made by the petitioner convicted him. The wording of Section 27 of the Indian Evidence Act also further goes to repel the argument of the petitioner's counsel. Section 27 reads as under; -

Provided, that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of police-officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

5. This section is an exception to Sections 25 and 26, of the-Indian Evidence Act. This section nowhere lays down that to prove such a disclosure statement to examine the investigating officer who interrogated the petitioner was obligatory. What is required under this section is that the person when he makes the disclosure statement should be accused of an offence and must be in the custody of a police officer. Even then only so much of the information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, can be proved. I, therefore, see no force in this contention of the petitioner's counsel.

6. His last submission was that the petitioner had been released on bail by Gurdev Singh J. on the 4th of May 1984 and at any rate he should not be sent back behind the bars again and, if necessary, the remaining portion of his sentence be converted into fine. I feel that taking into consideration the value of the stolen property and other facts and Circumstances of this case, the ends of justice will be

met if the unexpired portion of his sentence of the imprisonment is converted into a fine of Rs. 250. I order accordingly. In default of payment of fine he will suffer the remaining portion of his sentence. The order of the Court below is modified only to this extent.

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