

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 111/2009

% Reserved on: 12<sup>th</sup> April, 2012

Decided on: 9<sup>th</sup> July, 2012

NARENDER KUMAR SINGH @ NENDAY ..... Petitioner

Through: Mr. Prag Chawla, Adv.

versus

STATE ..... Respondent

Through: Mr. Mukesh Gupta, APP for State  
with SI Alok Bajpai, PS S.P. Badli.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. By the present petition the Petitioner seeks to set aside judgment dated 25<sup>th</sup> February, 2009 passed by the learned Additional Sessions Judge upholding the judgment passed by the learned Metropolitan Magistrate dated 12<sup>th</sup> November, 2007 and the order on sentence dated 26<sup>th</sup> November, 2007 whereby the Petitioner was convicted for offence under Section 411 IPC and sentenced to undergo Rigorous Imprisonment for six months.

2. Learned counsel for the Petitioner primarily contends that the Petitioner was only sitting in the car which was allegedly the stolen car. The car has been seized from the possession of co-accused. The learned courts below failed to appreciate the fact that the petitioner had no knowledge about the stolen car and was simply occupying a seat in the car as a rider, thus no presumption can be raised against the petitioner. Furthermore the seizure memo of the car Ex.PW2/1 clearly records that the car was recovered from the possession of the co-accused Satya Bhagwan and no other evidence has

been placed on record to prove that the same was recovered from the joint possession of the petitioner and the co-accused.

3. Per contra learned APP for the State contends that the impugned judgments suffer from no illegality. There are two witnesses to the recovery of the stolen car i.e. PW2 and PW11 who have clearly deposed that the car was recovered from the joint possession of the petitioner and the co-accused. It is further stated that the presumption under the law was correctly raised and the burden of proof shifted to the petitioner to prove his innocence. Thus, the present petition has no merit and is liable to be dismissed.

4. I have heard learned counsels for the parties and perused the record.

5. Briefly, the case of the prosecution is that on 31<sup>st</sup> March, 1997 after receipt of DD No. 13-B, HC Ishwar Singh along with Ct. Narain went to premises bearing no. E-1/17, Sector 18, Rohini where statement of Arun Kaushik was recorded. Arun Kaushik complained about the theft of his Maruti 800 car bearing No. DDU 3119 with Engine No. 227004 and Chasis No. 169146 on 30<sup>th</sup> March, 1997 at about 10.30 PM p.m. A case was registered under Section 379/411 IPC. On 10<sup>th</sup> April, 1997 ASI Karan Singh and SI Vidya Dhar on the basis of secret information, reached near Road no. 41, opposite Depot Rohini-I, Delhi and arrested the Appellant and co-accused Satya Bhagwan in FIR No. 188/1997 and 189/1997 under Section 25 Arms Act PS Rohini. They recovered a Maruti 800 Car bearing no. DDU 3119 from their possession. The co-accused Satya Bhagwan was driving the vehicle while appellant was sitting on the next seat. The car bearing no. DDU 3119 was taken into possession. On completion of investigation, charge-sheet was filed. After recording the statement of the prosecution

witnesses, Petitioner and co-accused under Section 313 Cr.P.C. learned Metropolitan Magistrate convicted the Petitioner and the co-accused as mentioned above. Aggrieved by the judgment passed by the learned Metropolitan Magistrate convicting him, the Petitioner preferred an appeal. This appeal of the Petitioner was dismissed by the learned Addl. Sessions Judge vide judgment dated 25<sup>th</sup> February, 2009. These judgments passed by learned Metropolitan Magistrate and learned Addl. Sessions Judge are impugned in the present petition.

6. PW2 Darshan Kumar, Head Constable has deposed that on 10<sup>th</sup> April, 1997 he was posted in Anti Robbery Section, Crime Branch, Delhi. The accused Narender and Satya Bhagwan were arrested by the police team in case FIR No. 188/189 of 1997 of P.S. Rohini and at the time when the accused were apprehended by the police party, he was also the member of the raiding party. On 19<sup>th</sup> April, 1997 information was available with Insp. Ishwar Singh regarding 2,3 persons coming from the side of Haryana and going towards Madhuban Chowk. At about 6.15 p.m. one car came from the side of Madhuban Chowk when they were present at DTC bus depot. Signal was given to stop the car however the driver of the said car did not stop. The car was chased and made to stop. Satya Bhagwan was driving the said car and the Petitioner Narender was sitting on the front side seat of driver. One country made pistol was recovered from Narender and the car bearing No. DDU 3319 was also taken into possession. On interrogation, both the accused made disclosure statement that they had stolen the said car from E-1/70, Sector-8, Rohini. The car was taken into possession vide seizure memo PW2/A.

7. PW7 Head Constable Ishwar Singh, deposed that on 31<sup>st</sup> March, 1997 he was posted as Head Constable at PS Samay Pur Badli and on that date at about 7 a.m. on receiving DD No. 13B regarding theft he went to the spot at E-1/70 Sector 12, Rohini, where the complainant Arun Kaushik met him and told about the theft of the maruti car. He does not remember the car number. He obtained his complaint and prepared a rukka and handed over the same to Const. Narain Singh for the registration of the case. After some time Const. Narain Singh came to the spot with original rukka Ex. W7/A and copy of the FIR Ex.PW1/A. On 1<sup>st</sup> April, 1997 he flashed out wireless message through out India and informed all the Police Stations about the theft of car. He enquired on his level and when he found no clue of the car, he informed the NCRT Authority to inform him whenever any such car was found. The car which was stolen was of white colour and the number of that car was DDU 3119 as disclosed by the Complainant. The case was transferred to the Crime Branch on 10<sup>th</sup> April, 1997.

8. Ex.PW2/A i.e. the seizure memo of the car bearing no. 3119 records that the said car was recovered from the accused Satya Bhagwan from road no. 4, near DTC Depot, Rohini.

9. Section 411 IPC 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.”

10. A bare reading of the Section shows that the essential ingredients to constitute an offence under this section are that the person must dishonestly

receive or retain any stolen property knowingly or having reasons to believe that the same is stolen. Thus it is clear that receiving or retaining of a stolen property and having the knowledge are essential. From the facts proved on record it cannot be legitimately concluded that the Petitioner had the requisite knowledge or belief that the car was a stolen one. No evidence has been placed on record that the Petitioner shared the requisite mensrea with the co-accused who was in constructive possession of the car.

11. Hence keeping in view the facts and circumstances of the present case the petitioner is acquitted of the charge under Section 411 IPC. The impugned judgments are set aside.

12. Petitioner is on bail. His bail and surety bonds are discharged. Petition is accordingly disposed of.

**(MUKTA GUPTA)**  
**JUDGE**

**JULY 9, 2012**  
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