

# IN THE HIGH COURT OF SINDH AT KARACHI

## Criminal Revision Application No. 229 of 2023

Applicant : Abdul Saboor son of Fajrul Aala  
Through Mr. Moula Bux Bhutto, advocate.

Respondent : The State  
Through Mr. Tahir Hussain Mangi, APG

Date of short order : 09.05.2025

Date of reasons : 30.05.2025

### **REASONS**

**KHALID HUSSAIN SHAHANI, J -.** The applicant invokes the revisional jurisdiction of this court, seeks to challenge and set aside the judgment of conviction dated 04.10.2023, passed by the learned Additional Sessions Judge V-th, South, Karachi, in Criminal Appeal No.22 of 2023, which upheld the conviction of the applicant for the offence punishable under Section 411 PPC, sentencing him to simple imprisonment for three years with the benefit of Section 382-B Cr.P.C. The said appellate judgment affirmed the initial judgment of conviction dated 24.07.2023, rendered by the learned Judicial Magistrate-XXVI, South, Karachi, in Criminal Case No. 8926 of 2021, emanating from FIR No. 332/2021 of P.S. Garden.

2. The prosecution's case, as unfolded through the FIR, is that on 31.10.2021, at about 03:20 hours, a police party led by Sub-Inspector Muhammad Mukhtar, acting on spy information, conducted a raid on a godown situated in Shehbaz Nagar Badshahi Road, Karachi. The applicant, Abdul Saboor, was allegedly arrested from the said godown in pursuance of Section 54 Cr.P.C., and numerous articles presumed to be stolen property were seized. The recovered items included seven handmade number plates of motorcycles (bearing numbers KGB-2533, KDP-2102, KHW-3309, KKP-9343, KDS-9314, 5593, KHI-153), 99 big and small plastic sacks containing bike engines, body parts, heads, mudguards, batteries, and other assorted parts, three rolls of K.E. electric silver and copper wires, five rolls of brass electric wire, 10 pieces of silver wire, 10-12 feet lengthy coated cable, 10 yards lengthy and 25 yards thick wires, two sacks of cut-shape copper, one sack of cut-shape silver, five big/small 'Degain' (food pots),

plastic coated covers, and phone wires of different colors. Consequent upon case was registered inter alia on above facts.

3. During the trial, the prosecution examined four witnesses: PW-01 S.I.P. Muhammad Mukhtar (Complainant), PW-2 ASI Raja Muhammad Afzal, PW-3 PC Ali Murad, and PW-4 ASI Muhammad Waryam (Investigating Officer). All prosecution witnesses broadly narrated the events of the raid, arrest, and recovery. The I.O. (PW-4) also presented evidence regarding verification of some recovered items and the applicant's alleged previous criminal record.

4. Upon conclusion of the prosecution evidence, the statement of the accused, Abdul Saboor, was recorded under Section 342 Cr.P.C., where he denied the allegations and claimed false implication due to non-payment of bribe. He opted to give his statement on oath under Section 340(2) Cr.P.C. In his defence, Abdul Saboor (DW-1) detailed an account of alleged police harassment, demand for 'bhatta' (protection money), forceful entry into his scrap shop/godown, destruction of CCTV cameras, snatching of cash, and false implication when he refused to pay the demanded bribe. He also produced some documents, including pictures of broken CCTV, a gate pass slip, and duplicate receipts for purchasing scrap articles.

5. The learned trial court, after appreciating the evidence, convicted the applicant for the offence under Section 411 PPC. Aggrieved by this conviction, the applicant preferred a Criminal Appeal before the learned Additional Sessions Judge, which was dismissed, thereby upholding the conviction. Hence, the applicant has approached this Honourable Court in revision.

6. Mr. Moula Bux Bhutto, the learned counsel for the applicant, vehemently argued that the impugned judgments of both the trial court and the appellate court are legally flawed and based on misreading and non-appreciation of evidence. He highlighted several critical points. Firstly, he contended that there is a complete absence of any independent public witness to the alleged raid, arrest, and recovery. Despite the police claiming to have prior "spy information," which would allow for arrangements to secure independent witnesses, none were associated. This, he argued, casts a serious doubt on the veracity of the police version, especially given the

large quantity and nature of the recovered articles. Secondly, the learned counsel pointed out significant contradictions and inconsistencies in the testimonies of the prosecution witnesses regarding the exact time of the raid, the duration spent at the godown, and the sequence of events leading to the re-arrest and FIR registration. He particularly emphasized the admission by PW-1 that he had no search warrant to enter the godown, and the mysterious manner in which the godown was allegedly opened during the site inspection, involving an unnamed "boy" whose presence was not clarified. Thirdly, it was submitted that the prosecution failed to establish the *mens rea* required for an offence under Section 411 PPC. He argued that the mere recovery of articles from a place, without concrete proof that the accused knew or had reason to believe them to be stolen, is insufficient for conviction. He stressed that the prosecution did not examine any of the actual complainants of the theft FIRs allegedly linked to the recovered property, which is a fatal omission in proving the "stolen" nature of the property and the applicant's knowledge thereof. Fourthly, the learned counsel argued that the material questions, particularly those pertaining to the specific numbered engine heads and the applicant's alleged previous criminal record, were not properly put to the accused in his statement under Section 342 Cr.P.C. This deprived the applicant of a fair opportunity to explain or rebut such incriminating circumstances. Lastly, it was contended that the defence version, supported by the applicant's statement on oath and documentary evidence regarding payment demands and alleged police misconduct, was overlooked by both courts below. He submitted that even if the defence version is not fully proven, it certainly raises a reasonable doubt about the prosecution's case, entitling the applicant to the benefit of doubt.

7. Conversely, the learned Assistant Prosecutor General for the State, supported the impugned judgments. He argued that the conviction was based on consistent testimonies of the police officials who conducted the raid and recovery. He submitted that the presence of the accused at the godown, his failure to provide a satisfactory explanation for the huge quantity of property, and the subsequent tracing of some items to specific theft FIRs, conclusively prove his guilt under Section 411 PPC. The learned APG contended that minor contradictions in the statements of police witnesses are natural and do not affect the core of the prosecution case. He

emphasized that the recovery of stolen property, coupled with the alleged admission by the accused (even if in custody), is sufficient to establish knowledge. He further highlighted the I.O.'s testimony regarding the verification of the recovered items and the previous criminal record of the accused as strong circumstantial evidence. Regarding the absence of private witnesses, he argued that it is not a mandatory requirement in every case, especially when police officials are themselves witnesses to the crime.

8. I have given anxious consideration to the arguments advanced by the learned counsel for the applicant and the learned APG for the State, and have meticulously perused the entire record of the case, including the trial court's proceedings, the impugned judgments, and the evidence adduced by both sides.

9. While the learned APG endeavored to uphold the conviction, a careful examination of the record reveals several fundamental flaws and inconsistencies in the prosecution's narrative, which cumulatively cast serious doubt on its veracity.

10. The discrepancies in the timings provided by the prosecution witnesses are not minor. PW-1's assertion that the accused and property were brought back to the PS at 03:20 hours on 31.10.2021, while PW-3 states it was between 02:30 to 03:00 hours, points to an imprecision in crucial aspects of the arrest and recovery timeline. More critically, the FIR's registration at 01:25 hours on 01.11.2021, after the alleged re-arrest and admission by the accused on the same date (01.11.2021 at 01:15 hours as per PW-2), indicates a highly irregular and legally questionable sequence of events. The formal re-arrest based on an alleged admission should logically follow, not precede, the registration of the formal charge (FIR). The admission by PW-1 that he had no search warrant before entering the godown, coupled with the reliance on "spy information," seriously undermines the legality of the initial entry and subsequent recovery. While exigencies may permit warrantless entries in certain situations, the sheer volume of material recovered and the nature of the premises (a godown, not an open public place) necessitate adherence to legal procedures, including obtaining a search warrant or documenting clear exigent circumstances for its absence. The unexplained presence and role of an unnamed "boy" in opening the locked godown during the site inspection, as testified by PW-2

and PW-4, further deepens the mystery and raises questions about the transparency of the entire operation.

11. The most glaring infirmity in the prosecution's case is the complete absence of any independent public witness to the raid, arrest, and recovery. All four prosecution witnesses are police officials. The location of the raid is described as Shehbaz Nagar Badshahi Road, a commercial area, making the claim of non-availability of private witnesses highly improbable. The reliance solely on police officials' testimonies, without independent corroboration, especially when the recovery is from a private premises and involves a large quantity of diverse items, makes the prosecution story vulnerable to doubt. The rule of prudence dictates that evidence from official witnesses, in the absence of independent corroboration, must be scrutinized with greater caution.

12. A critical procedural lapse was the initial non-physical production of the voluminous case property in court for proper identification by witnesses and confrontation by the accused during the initial stages of PW-1's testimony. While a Commissioner later verified the property at the Police Station, the principle of direct evidence and proper confrontation is paramount. More importantly, a significant lacuna in the statement of the accused under Section 342 Cr.P.C. is the failure to specifically confront him with crucial incriminating details. Despite the I.O. (PW-4) testifying about the recovery of 47 engine heads with embossed numbers and tracing their particulars, and also about two previous FIRs against the accused, these specific details were not put to the accused in his statement under section 342 Cr.P.C. The question regarding the recovered articles was general, depriving the accused of a specific opportunity to explain or rebut the presence of such numbered items or to address his alleged past criminal record. This constitutes a material omission and prejudice to the accused's defence.

13. The offence under Section 411 PPC hinges on the knowledge or reasonable belief that the property is stolen. The prosecution's primary evidence for this *mens rea* relies on the accused's alleged admission during police custody. Such admissions, without being voluntarily recorded under Section 164 Cr.P.C., carry little evidentiary weight, especially when the I.O. (PW-4) himself admitted that no such statement was recorded.

14. Crucially, despite the I.O.'s claim of tracing theft FIRs related to the recovered number plates and engine parts, none of the actual complainants/victims of these alleged thefts were examined by the prosecution. Without the testimony of the legitimate owners identifying their stolen property and detailing the circumstances of its theft, the essential element of the property being "stolen" and the accused's knowledge thereof remains unproven. The I.O.'s admission that he did not know the status of the related theft cases further compounds this weakness.

15. The applicant, in his defence statement on oath, provided a detailed narrative of police harassment, demand for bribe, and false implication. While his defence witnesses were not examined beyond his own statement, the consistency of his denial and the specific allegations of police misconduct, coupled with the fact that a complaint was lodged with the DIG, cannot be simply dismissed as false without proper rebuttal. The evidence regarding alleged destruction of CCTV cameras and the forceful seizure of property, if not fully proven by the defence, certainly raises doubts about the prosecution's version, especially in light of the aforementioned contradictions in the prosecution's own evidence.

16. The cumulative effect of the multitude of contradictions, significant omissions, and procedural irregularities in the prosecution's case fundamentally undermines its credibility. The complete absence of independent public witnesses to a raid and recovery involving such a large quantity of items from a commercial area, the irregularities in the timing of the events and FIR registration, the lack of a search warrant, and the mysterious opening of the godown, all cast a pall of doubt over the prosecution's claim. Furthermore, the failure to specifically confront the accused with crucial incriminating evidence, such as the numbered engine heads and his previous criminal record, during his Section 342 Cr.P.C. statement, constitutes a serious procedural defect that prejudiced his defence. Most importantly, the prosecution's inability to produce the actual victims of the alleged thefts to identify their property and establish its "stolen" nature, combined with the reliance on a police-custody admission for *mens rea*, renders the charge of receiving stolen property unproven beyond a reasonable doubt.

17. It is a cardinal principle of criminal jurisprudence that the burden of proof rests squarely on the prosecution, and this burden never shifts. The prosecution must prove its case beyond all reasonable doubt, and if even a single reasonable doubt arises from the evidence, the benefit of that doubt must invariably go to the accused. In the instant case, the array of doubts is not singular but pervasive, creating a serious question mark over the applicant's guilt. The defence version, though not conclusively established, effectively demolishes the certainty required for a conviction.

18. Therefore, for the aforementioned detailed reasons, it is apparent that the prosecution has miserably failed to prove the charge against the applicant, Abdul Saboor, for offence under Section 411 PPC, beyond a reasonable doubt. In consequence of these findings, this Court had, through its short order dated 09.05.2025, already allowed Criminal Revision Application No.229 of 2023, setting aside the impugned judgment of conviction dated 04.10.2023 passed by the learned Additional Sessions Judge V-th, South, Karachi, and the initial judgment of conviction dated 24.07.2023 passed by the learned Judicial Magistrate No. XXVI, South, Karachi. The applicant, Abdul Saboor, stands acquitted of the charge, and he was ordered to be released forthwith if not required in any other case. These are detailed reasons thereof.

**J U D G E**