



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 274 OF 2016

SACHIN BHASKAR KAMBALE

VERSUS

THE STATE OF MAHARASHTRA

...

Ms. Shilpa Aurangabadkar, advocate h/f Shri Jadhav Satej S.,
Advocate for the Applicant.

Ms. B.B. Gunjal, APP for the Respondent/ State.

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 25 August 2026

P. C. :-

1. The applicant is challenging the impugned judgment and order dated 21.12.2016 passed by the learned District Judge-1, Newasa, in Criminal Appeal No.4/2016 thereby, dismissing the appeal filed by the present applicant and confirming the judgment and order of conviction dated 01.01.2016 passed by the learned JMFC, Newasa, in RTC No.196/2013 whereby, the applicant is convicted for the offence punishable under Section 379 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five months and to pay fine of Rs.3000/- and in default of payment of fine, to suffer rigorous imprisonment of

one month.

2. The prosecution case, in brief, is that on 08.05.2013 at about 1:00 p.m., PSI Mahaveer Jadhav-PW-1 (informant) along with police staff intercepted a dumper bearing registration No. MH-20/CT-2996 near Bhairavnath Temple on Mhalas Pimpalgaon–Wadala Road. The dumper was allegedly carrying about three brass of sand. The applicant/ accused No.1 Sachin was found driving the said dumper. On inquiry, he allegedly failed to produce any permit authorising excavation and transportation of the sand. The accused and the dumper were accordingly taken to Police Station Sonai, where PSI Jadhav lodged the complaint. Accordingly, Crime No. I-73 of 2013 came to be registered. During investigation, the spot panchnama was drawn, statements of witnesses were recorded and, upon completion of investigation, charge-sheet was filed against accused No.1 Sachin, the driver of the dumper and accused No.2 Anant Jagtap, alleged owner of vehicle.

3. The learned Trial Court framed charges against the accused for the offences punishable under Section 379 read with Section 34 of the Indian Penal Code, Section 15 read with

Section 3 of the Environment (Protection) Act and Section 3 read with Section 181 of the Motor Vehicles Act. The accused pleaded not guilty and claimed to be tried. During the trial, the prosecution examined five witnesses, including the informant PSI Mahaveer Jadhav (PW-1), police witnesses Nitin Saptarshi (PW-2) and API Patil (PW-3), panch witness Balasaheb Ambade (PW-4), and investigating officer PHC Arjun Ware (PW-5). Upon appreciation of the evidence, the learned Trial Court convicted accused No.1 Sachin for the offence punishable under Section 379 of the Indian Penal Code, whereas, accused No.2 Anant is acquitted. The applicant/ accused No.1 preferred the appeal, which came to be dismissed vide the impugned judgment. Hence, this revision.

4. Learned advocate for the applicant vehemently submits that both the Courts below have failed to appreciate evidence on record in proper perspective. According to her, the applicant is driver on the truck owned by accused No.2 Anant and he was following the instructions of his master, as such, he is not involved in commission of the crime in question. The applicant was only entrusted with the task of driving the vehicle

and he is not responsible for the sand filled in by the workers in vehicle. By no stretch of imagination, the applicant cannot be said to be guilt of the offence of theft. The applicant deserves to be given benefit of doubt. The prosecution has virtually failed to establish that the property i.e. sand was really belonging to the State Government. Merely intercepting the vehicle carrying sand cannot be presumed that the property found in the vehicle belongs to the Government. Therefore, there being very weak evidence against the applicant so as to convict him, the impugned orders need to be quashed and set aside.

5. Per contra, learned APP strongly opposes the revision. According to her, the prosecution has established guilt of the applicant. The applicant was found in possession of property which is belonging to the Government. The police officers who have deposed against the applicant are not having any grudge against him so as to implicate him in false case, therefore, their evidence cannot be discarded straightway. Learned APP, therefore, submits that the impugned orders are correct and proper and require no interference at the hands of this Court.

6. After hearing the learned advocates and going through the record available, I find that the applicant is driver on the offended truck called as 'dumper'. The material on record indicates that the dumper was intercepted while carrying sand and, on inquiry, the applicant was not in possession of requisite permit for transportation thereof. However, the prosecution has not brought on record cogent evidence to establish the source from which the said sand was excavated, the person in whose possession the same was immediately prior to its alleged removal, or that the applicant had dishonestly removed the said sand from such possession without consent. On the basis of suspicion and doubt, the informant police appears to have taken recourse to prosecute the driver and owner of vehicle. The learned JMFC has observed that accused No.2 Anant was not present at the time of incident. According to the prosecution, accused No.2 was owner of vehicle and on his say, the applicant/accused No.1 committed offence. However, the learned JMFC was pleased to observe that since no evidence is produced by the prosecution showing ownership of the vehicle, the said accused No.2 came to be acquitted. I find that the acquittal of accused No.2, who was alleged to be the owner of the vehicle, is not by

itself determinative of the present revision. The question, however, is whether the evidence on record establishes the essential ingredients of theft against the applicant. Section 378 is useful for the purpose of deciding this revision. Section 378 of the Indian Penal Code reads as under:-

“378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.”

7. In pursuance of the aforesaid provision of law, it was mandatory on the part of the prosecution to establish that the applicant has taken out the property out of possession of any person without that person's consent with dishonest intention. In this case, the prosecution was required to establish that the stolen property was indeed property of the Government. There is no evidence of any authority brought on record to establish that the stolen property was belonging to any authority or the Government. It is not proved that stolen property belongs to the State Government. The Investigating Officer ought to have obtained the report from the Tahasildar to claim that the stolen property was the State property.

8. It is true that unauthorised excavation or transportation of sand may, in an appropriate case, constitute an offence of theft if the prosecution establishes that the sand, being in the possession of the State or any other person, was dishonestly removed without consent. However, the mere absence of a permit or authority for transportation of sand, by itself, does not establish all the ingredients of theft. The prosecution must prove the essential ingredients of Section 378 of the Indian Penal Code by cogent and reliable evidence. In the present case, no evidence has been brought on record to establish that the particular quantity of sand found in the dumper had been dishonestly removed from the possession of the State or any other identifiable person without consent. There is also no cogent evidence to establish the applicant's participation in such alleged removal or the requisite dishonest intention. The applicant being the driver of the vehicle, by itself, cannot lead to an inference that he had committed theft of the sand carried in the vehicle.

9. In view of the above discussion, I am of the opinion that both the Courts below have committed grave error in convicting the applicant under Section 379 of the Indian Penal

Code. Hence, the following order:-

ORDER

- (a) The Criminal Revision Application is allowed.
- (b) The impugned judgments and orders of the Courts below are quashed and set aside and the applicant is acquitted of the offence punishable under Section 379 of the Indian Penal Code.
- (c) The applicant is on bail. His bail bond stands cancelled and the surety, if any, stands discharged.
- (d) The fine amount, if deposited, be refunded to the applicant.
- (e) The record and proceedings be sent back to the concerned Court.