

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.149 of 2004

Dharmu Sidar, S/o Shri Munu Sidar, aged about 37 years, R/o Village Salar, Police Station & Tahsil Sarangarh, Distt. Raigarh (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, Raigarh/Police Station Sarangarh, Distt. Raigarh (C.G.)

---- Non-applicant

For Applicant:	Mr. R.S. Patel, Advocate.
For Non-applicant:	Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/09/2015

1. Invoking revisional jurisdiction of this Court under Section 397 read with Section 401 of the CrPC, the applicant has filed this revision questioning the impugned judgment dated 24-2-2004 passed by the 4th Additional Sessions Judge (FTC), Raigarh in Criminal Appeal No.67/2003, confirming his conviction for offence under Section 379 of the IPC and modifying sentence from one year RI and Rs.3,000/- fine to 6 months RI and Rs.500/- fine.
2. Mr. R.S. Patel, learned counsel for the applicant, would submit that finding recorded by the two Courts below holding the applicant guilty for the offence punishable under Section 379 of the IPC is perverse and contrary to record, as such it deserves to be set aside. Alternatively, he would further submit that the sentence awarded i.e. 6 months RI and fine of Rs.500/- is disproportionate and not commensurate to the guilt of the

accused and it be reduced accordingly to the period already undergone by the applicant, as the applicant remained in jail for a period of one month.

3. Mr. Neeraj Jain, learned State counsel, would submit that conviction recorded by the two Courts below holding the applicant guilty for offence under Section 379 of the IPC is concurrent finding of the two Courts below based on evidence material available on record and does not require interference. On the question of sentence, he would further submit that the appellate Court has already considered and reduced the sentence from one RI & Rs.3,000/- fine to 6 months RI & Rs.500/- fine and that does not require any interference as it is just, fair and reasonable.
4. I have heard learned counsel appearing for the parties, perused the judgment impugned and records of the two Courts below.
5. The accused / applicant was prosecuted under Section 379 of the IPC with a charge that on 27-7-2001 at Village Parsada, he had stolen 25 Kgs. of electric wire owned by the Electricity Board valued at Rs.7,050/- dishonestly and thereby committed the offence.
6. The trial Court has clearly recorded finding that the electric wire owned by the Electricity Board was recovered from the possession of the applicant, same has been duly proved and that such a commodity of wire is not available in open market and he has stolen the wire with dishonest intention. On appeal being preferred, the said finding has been affirmed by the appellate Court finding no perversity.

7. After hearing learned counsel for the parties and after going through the finding recorded concurrently by the two Courts below, I find that the finding recorded by the two Courts below is not perverse, as the electric wire owned by the Electricity Board was found in possession of the applicant, that is duly proved and the prosecution has proved the ingredients of the offence under Section 379 of the IPC against the applicant. I do not find any illegality in the finding so recorded by the trial Court as affirmed by the appellate Court and I hereby affirm the same. This brings me to the question of reasonableness of sentence.
8. Relying upon the decision rendered by this Court in **Nisar Khan and another v. State of Chhattisgarh**¹, learned counsel for the applicant would submit that the incident is of 27-7-2001, the applicant has already suffered the trauma of prosecution for last 14 years, in the meanwhile, he has not committed any offence and, therefore, the period of 20 days already undergone by the applicant be held sufficient sentence and the revision be allowed in part.
9. In a decision rendered by this Court in **Nisar Khan** (supra), the applicant therein was given the benefit of period already undergone by him, as he had remained in jail for more than one month.
10. Considering the facts and circumstances of the present case, the fact that the applicant is facing trial for last 14 years, he remained in jail for 20 days and following the law laid down by this Court in **Nisar Khan** (supra), in the considered opinion of this Court, the

1 2001(1) MPHT 19 (CG)

period of one month sentence would be appropriate and fine sentence is enhanced to Rs.3,000/- which the applicant will deposit within one month from today. In case the fine amount is not deposited, the applicant would undergo RI for a period of fifteen days.

11. Resultantly, the revision is allowed in part. Conviction of the applicant for offence under Section 379 of the IPC is maintained, however, jail sentence is reduced to RI for one month and fine sentence is enhanced to Rs.3,000/-, in default additional RI for 15 days. The applicant is directed to surrender for serving remaining part of sentence.

Sd/-
(Sanjay K. Agrawal)
Judge