

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDCITION**

CRIMINAL REVISION APPLICATION NO.15 OF 2002

Jafar Akbar Siddiqui.	...Applicant.
vs.	
State of Maharashtra.	...Respondent.

None for the applicant.
Mr.A.R.Patilo, APP. for Respondent State.

**CORAM : C.VBHADANG, J.
DATE : 29TH APRIL , 2015**

ORAL JUDGMENT:

By this revision application the original accused No.1 Jafar Akbar Siddiqui is challenging his conviction and sentence under Section 379 of the I.P.C. passed by the learned Additional Chief Metropolitan Magistrate in Criminal Case Nos.166/P/99 and 167/P/99.The applicant has been sentenced to suffer R.I. for one year and to pay a fine of Rs.3000/- in default to suffer S.I. for two months. That was challenged by the applicant in Appeal No.229 of 1999 before the Sessions Court. By judgment dated 27 November 2001 the Additional Sessions Judge, Greater Bombay dismissed the same. Hence, this revision application.

2) Brief facts are that, according to the prosecution, the applicant along with his associates had committed theft of several

car tapes. He was arrested on suspicion and at his instance several such car tapes were recovered under discovery panchanama. Accordingly, applicant and one Mohammed Asif were prosecuted in two separate cases being Case Nos. 166/P/1999 and 167/P/1999 before the Additional Chief Metropolitan Magistrate, Girgaon, Mumbai.

3) At the trial, the prosecution examined in all four witnesses. Apart from the complainant, each case P.W.2 Tukaram Baburao Kotkunde, P.W.3 Ravindra Vishnu Sawant and P.W.4 Suhas Shankar Raikar were examined as common witnesses in both the cases. It appears that during the course of trial the original accused No.2 Mohammed Asif Sardar had absconded and his trial was separated. Learned Magistrate found that the prosecution has established the guilt of the applicant. Consequently, the learned Magistrate convicted and sentenced the applicant which has been confirmed by the Sessions Judge.

4) In this case there is no appearance on behalf of the applicant on 27 April 2015, 26 April 2015 and even today. The record shows that even when the matter was listed on 6 February 2012 there was no appearance on behalf of the petitioner. This being a criminal revision application, I have heard Shri. Patil, learned APP. and perused the record. Accordingly, the revision application is being disposed of on merits.

5) Ideally the conviction and sentence recorded in two separate cases, should have been challenged separately. However, it appears that the applicant chose to file a single appeal before the learned Sessions Judge and a criminal revision application before this Court which have been entertained. |Thus, I do not propose to dwell on this technical aspect, at this distance of time.

6) The only point which arises for determination is as to whether the impugned judgment passed by the learned Metropolitan Magistrate and confirmed by the learned Sessions Judge needs interference.

My answer is in the negative for the following reasons.

7) P. W.1 Lata Shirish Amin is the complainant in Case No.166/P-99. She deposed that her husband owns Maruti |Car and she was using that car. On the day of incident she parked her car at the normal parking place. On the next day she found that glasses of the car were broken and the Stepney and cassette player were stolen. She lodged complaint which is at Exh.P-1. She had identified the tape recorder Exh.P-2 before the Court.

7) P.W. No.2 Tukaram Kotkunde, API has stated that he had arrested the applicant in other crime namely CR Nos.25/96,

127/96 and 141/96. On 4 August 1996, the applicant gave confessional statement offering to produce the tape recorder. He accordingly led police and panchas to Marol Maroshi road, to his residential house and produced six tape recorders kept on the mezzanine floor of the house. They were accordingly seized under Panchanama Exh.4A. Exh.P-4 is the confessional statement of the applicant. On 12 September 1996, the complainant Rohit Ramchandani in Criminal Case No.167/1999 had visited the police station and had stated that he had lodged complaint at Gramdevi Police Station about the theft of tape recorder. Accordingly, the property was sent to Gamdevi Police Station. Similarly, on 22 September 1996, the complainant Lata Amin in Case No.166/99 had visited the police station and identified her tape recorder. She had lodged Complaint. P.W.3-Ravindra Sawant is the panch witness who had supported the prosecution while P.W.4 Suhas Raikar was the Investigating Officer. The learned Magistrate as well as the learned Sessions Judge have concurrently found that the evidence of these witness was consistent and reliable.

9) In so far as panch witness is concerned, the only defence which was raised was that he was a stock panch and had acted in ten cases previously. Perusal of the judgment and the order of the Sessions Judge it appears that this aspect has been considered and it has been found that in respect of each of the

tape recorders and other articles recovered, separate crimes were registered and in respect of those panchanamas the said panch had acted as such. The court below have found and to my mind rightly so, that for any such reason the witness cannot be branded as stock witness, so as to disbelieve his version. Perusal of the judgment of the Sessions Judge further shows that reliance was placed on two earlier decisions of the learned Metropolitan Magistrate in Criminal Case NO.373/P/99, CC. No.1050/P-96 and C.C.No.1051/P/96 in which the applicant was acquitted. It was contended that P.W.3 had acted as panch witness in those cases also. Perusal of Para 6 of the Judgment of the learned Sessions Judge clearly shows that this aspect has been considered case by case in order to hold that recovery panchanamas were disbelieved for different reasons and not on the ground that evidence of the panch witness was not acceptable. On careful perusal of the order passed by the learned Metropolitan Magistrate and the learned Sessions Judge, I do not find that a case for interference is made out. In the result, revision application is dismissed.

(C. V. BHADANG, J.)