

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.312 of 2007**

- Vikas Vishwakarma S/o Shri Kumar Vishwakarma, aged about 24 years, R/o1/I Street 20, Sector 6, Bhilai, Tahsil & Distt. Durg (C.G.OS

---- Appellant**Versus**

- State Of Chhattisgarh-Through District Magistrate, Durg, Distt. Durg (C.G.)

---- Respondent

For the Appellant : Shri Ram Patankar, Advocate.
 For the State/Respondent : Shri R.K. Jaiswal, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on board****08/12/2016**

1. This revision has been brought against the judgment of conviction and order of sentence passed by the 10th Additional Sessions Judge(FTC), Durg in Criminal appeal No.16/2007 on 30.06.2007, whereby the conviction and sentence passed against the applicant in criminal case No.943 of 2002 before Additional Chief Judicial Magistrate, Durg by judgment dated 26.12.2006 was upheld.
2. The facts of the case are these, that complainant Sunderlal Jain lodged one FIR in P.S. Bhilai Nagar on 04.10.2002, that on the same day between 02:30 to 3:00 p.m., he had been to Canara Bank in Bhilai Nagar on his motorcycle Herohonda Splender No.CG-07-A/2470. He parked and locked his motorcycle outside the Bank and went inside. On coming back, he found his motorcycle missing. On his information, F.I.R. Ex.P/4 was written and offence under Section 379 of IPC was registered. During investigation, applicant was apprehended and

interrogated on 07.12.2002, in which he made a statement for recovery of the concerned motorcycle vide Ex.P/1. One motorcycle Herohonda Splender having a number plate bearing registration No.C.G.07/ZS/0191 Engine No.00-K-18-E/22683 chassis No.00K/20/F/22700 was recovered from the possession of Goutam Jain (PW/10) and seized vide seizure memo Ex.P/2. On the basis of engine and chesis number recorded in FIR Ex.P/4, seized motorcycle was found to be the article of theft, statement of witnesses were recorded. On completion of investigation, applicant and three others were charge- sheeted under Section 379/34 of IPC.

3. Applicant and three others were charged under Section 379/34 of IPC, on denial, trial was conducted and impugned judgment was passed by the trial Court in which the accused persons other than the applicant and co-accused persons were all convicted under Section 379/34 of IPC and sentenced with R.I. for six months along with a fine of Rs.200/- each. Applicant preferred an appeal before the Sessions Court, Durg which was heard and decided by the Xth Additional Sessions Judge (FTC) on 30.06.2007, whereby the conviction and sentence passed by Trial Court against the applicant was upheld and appeal was dismissed.
4. The grounds in this revision are these that the impugned judgment is contrary to law and facts and circumstances of the case. There is no such evidence of prosecution on the basis of which applicant could have been convicted. Hence, for this reason, trial Court has erred in recording of finding of conviction against the applicant. In the alternative, it has been prayed that applicant has already undergone 1 ½ months in custody, if this Court is not inclined to interfere with the conviction against the applicant, the sentence part may be modified.
5. Learned counsel for the applicant submits, that the evidence led by the prosecution suffered from omissions, contradictions and discrepancies due to which no conviction could have been recorded

against the applicant. The witnesses of memorandum and seizure have not supported the prosecution case in clear terms, which could not have been formed the basis of finding against the applicant. Further it is submitted in alternative, that if the conviction against the applicant is upheld, than atleast the sentence part may be modified to the period of custody already undergone by the applicant.

6. Learned counsel for the State has opposed the grounds of revision and the arguments submitted by learned counsel for the applicant, it is submitted that the prosecution has successfully established that applicant was the person, who committed the theft of motorcycle from the possession of the complainant. The findings given by the trial Court and lower appellate Court do not suffer from any infirmity. Hence, for these reasons, there is no scope for interference.
7. Complainant Sunder Lal Jain (PW/5) has made a statement, that on the date of incident, motorcycle Hero Honda Splendor bearing registrationNo.CG-07- A/2470 was taken away by some unknown person without his consent, he supported the FIR Ex.P/4. This statement has remained unrebutted, which makes it clear that the above mentioned motorcycle was in possession of complainant which was removed from his possession without his consent, to establish that the offence of theft was committed. Prosecution has relied upon the evidence of memorandum and seizure.
8. Inspector S.K.A Nakvi(PW/8) has stated that on 07.12.2002 applicant Vikas Vishvakarma was interrogated in presence of witnesses Satyanarayan Gupta(PW/2) and A.K. Soni (PW/4) in which, applicant stated that he disposed off the vehicle in Shanichari Bazar and he will lead to that vide his memorandum statement Ex.P/1, thereafter, this witness along with applicant and other witnesses went to a shop named Vikas Auto Parts in Shanichari Bazar, from where one motorcycle Hero Honda Splendor bearing registration No. C.G.-07/ZS/0191 with engine No.00K/18/E/22683 and chasis No.

00K/20/F/22700 was recovered and seized vide Ex.P/2 along with one stamp paper, written by some Abhishek Mishra regarding the sale of motorcycle. In cross examination, he has denied the adverse suggestion given by the defence counsel.

9. Satyanarayan (PW/2) has stated that during interrogation, applicant stated that he had committed theft of one vehicle and did not give any statement about the where that vehicle was kept. The first part of the statement is admission in the form of confession before the police, which cannot be considered by the Court. Looking to the provisions under Section 24 and 25 of the Evidence Act. This witness was declared hostile and cross-examined by the prosecution. He has stated that applicant made a statement that he sold motorcycle C.G.-07/ZS/0191 with the help of one friend Dipak Kewat to Vikas Auto Parts, he has denied that co-accused Dinesh Sharma help in disposal of this motorcycle styling himself as Abhishek Mishra and executing the sale-deed on stamp paper. Later on, he has stated that motorcycle was not seized from the possession of Gautam Jain, but it was kept in the police station when he saw and signed the seizure memo. Further, he has also stated that applicant did not make any statement about where sold the motorcycle. This witness cannot be considered as reliable witness. As per Ex.P/1 the mediator for sale of motorcycle was Dinesh, which this witness has totally denied and he has also denied the seizure of motorcycle from the possession of Gautam Jain. He has remained consistent in his statement about the statement made by the applicant in memorandum Ex.P/1.

10. Ashok Kumar Soni (PW/4), he has simply denied the proceeding of memorandum Ex.P/1 and seizure Ex.P/2, he has been declared hostile, in cross-examination by the prosecution he has not made any admission to support the version of prosecution. Gutam Jain (PW/10) is the person from whom the concerned motorcycle was seized. He has stated that his friend Dipak Sonkar along with one unknown person came to his shop and offered one motorcycle for sale. After

negotiation, this witness purchased that motorcycle for paying the consideration amount of Rs.20,000/- the person with Dipak Sonkar, told that his name was Dinesh Sharma, who read and signed a sale-deed on stamp paper and who signed the stamp paper styling himself as Abhishek Mishra. This motorcycle was seized from his possession vide Ex.P/2. In cross examination, he was confronted with his previous statement Ex.P/10. According to which, there is omission in the Court statement that the person who brought the motorcycle was applicant Vikash Vishwakarma. On suggestion by defence counsel, this witness has stated that he has not given any statement of this sort.

11. On going through the whole deposition of these witnesses. There seems to be no statement against applicant Vikas Vishwakarma Gautam Jain (PW-10) has not identified the applicant Vikash Vishwakarma. It is clear that the statement of Investigating Officer is not supported by any of the independent witnesses and neither by Gautam Jain (PW/10), from in whose possession the concerned motorcycle was seized. Apart from that the registration number of motorcycle which was the article of theft and motorcycle which was recovered do not match, the only basis of identification had been the engine number and chassis number, detail about it has been given in the statement by Inspector S.K.A. Nakvi (PW/8) in his deposition, which is not challenged, but no such detail has been given by the complainant regarding the engine number and chassis number of the motorcycle, which was subject of theft, neither any document of registration etc. were seized from his possession and proved by the prosecution to establish this identity. Due to these reasons, though the statement of Inspector S.K.A. Nakvi(PW/8) leads to a discovery at the instance of applicant, but it is not conclusive as to the identity of the recovered motorcycle as the motorcycle which was subject to theft. For these reasons, the evidence of memorandum and seizure produced by prosecution in this case cannot be considered as conclusive and proved beyond reasonable doubt against the applicant in this case.

12. Statement of Dipak Kumar Sonkar (PW/6) is also worth considering who has stated that applicant approached him and told that he has one vehicle for sale, on which this witness took him to Gautam Jain(PW/10) and in his presence, the motorcycle was purchased by Gautam which one stamp paper Ex.P/5 was written in his presence. In cross examination, his statement is remained unrebutted. The statement of this witness is not sufficient to lead the any conclusion because Gautam Jain(PW/10) has very clearly omitted to make any statement against the present applicant. Apart from that there is no conclusive evidence on the point of identification of the articles of theft, also effects that statement. Statement of Dipak Sonkar(PW/6) itself is not sufficient to establish, that the motorcycle proposed for sale by the applicant was the article of theft in this case.
13. Prosecution has examined other witnesses as well consideration of their statement is not essential, as the finding against the applicant before the trial court and lower appellate court was based only on the evidence of memorandum and seizure. It has been found while considering this revision petition that the evidence led by the prosecution in support of the memorandum vide Ex.P/1 and seizure vide Ex.P/2 is not the conclusive proof against the applicant in this case. The finding of conviction based on this evidence is erroneous which is liable to be set aside.
14. In view of above discussion, this revision is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court and lower appellate Court is hereby set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge