

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.328 OF 2002

Shashin Maruti Pawar & Anr. V/s. The State of Maharashtra (Through Vikhroli Police Station, Mumbai)		Applicants
		Respondent

Mr. Manoj Mohite for the Applicants.

Mr. H.J. Dedia, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH FEBRUARY 2016.

P.C. :

1. This Revision Application is preferred by the Original Accused Nos.1 and 2 challenging their conviction under Section 379 r/w. 114 of IPC. Their conviction is recorded by the Judgment and Order dated 6th June 2001 of Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai, which was confirmed in Criminal Appeal No.161 of 2001 by the Judgment and Order dated 6th July 2002 of Additional Sessions Judge, Greater Bombay. By the said Judgment, the Applicants are sentenced to suffer R.I. for three months and to pay fine of Rs.3,500/- each, in default to suffer further R.I. for three months.

2. Brief facts of the Revision Application can be stated as follows :-

. On the night intervening between 14th and 15th January 1993, PW-1

Police Constable Haribhau Bodare and PW-3 Police Constable Bajirao Patil were on patrolling duty on Mobile Van No.3. PW-4 Police Constable Ramesh Dhumal was the Driver on the said Mobile Van. At about 4:45 am, when they came on Eastern Express Highway at Bhandup (East), they found two persons in suspicious manner. Those two persons, seeing the Police, started running away, throwing the articles in their hands. Hence, they were caught hold of. The articles were recovered and those were the tape-recorder, two speakers and the car fan. Those two persons were brought to the Police Station. Initially, PW-7 PSI Ramesh More arrested those persons under Section 41(1)(d) of Cr.P.C. and relevant Station Diary Entry was made to that effect. In the evening, PW-2 Subhash Suryavanshi came to the Police Station and lodged complaint of theft of car tape-recorder, two speakers and the car fan against those persons, who have been arraigned as the accused in the case. On his complaint, the crime was registered and further to completion of investigation, PW-7 PSI More filed Charge-Sheet in the Court against the Applicants.

3. The charge was framed against the Applicants-Original Accused, to which they pleaded not guilty and claimed trial. In support of its case, the prosecution examined in all 7 witnesses and on appreciation of their evidence, the Trial Court was pleased to convict them for the offence punishable under Section 379 r/w. 114 of IPC and sentenced them, as

aforesaid. The Applicants challenged the said Judgment in the Sessions Court, but it was in-vain.

4. While challenging their conviction in this Revision Application, learned counsel for the Applicants has submitted that there are, inter se, contradictions and discrepancies in the evidence of the witnesses, who claimed to have caught the Applicants red-handed from the spot. Secondly, it is urged that the Panchas to the Seizure Panchanama have not supported the prosecution case and in such situation, according to him, it becomes difficult to sustain the conviction and sentence, as recorded by the Trial Court, against the Applicants.

5. Per contra, learned A.P.P. has tried to support the impugned Judgment by submitting that there is evidence proving recovery of the stolen articles and the apprehension of the Applicants on the spot, which, according to learned APP, is sufficient to prove the guilt of the Applicants.

6. In the instant case, the prosecution has relied upon the evidence of PW-2 Subhash to prove that, when he has parked his Fiat Car bearing No.KAM-1114 at Eastern Express Highway, due to the engine fault and had gone to bring the mechanic, after he returned on the next morning, he found the tape-recorder, two speakers and fan were stolen from the car. Hence, he went to the Police Station and lodged the complaint.

7. There is evidence of PW-1 Police Constable Bodare that on that night, while he was on patrolling duty, he found Applicant Nos.1 and 2 moving in suspicious manner. On enquiry, it was found that they were having tape-recorder, two speakers and fan of the car. According to his evidence, they called Panchas at the spot and seized those articles.

8. As against it, the evidence of PW-3 Police Constable Patil, who was in the same Mobile Van, shows that he found those two persons moving in suspicious manner and walking fast. Hence, he caught hold of them. Both the persons threw on the ground the articles they were possessing, namely, the tape-recorder, two speakers and the car fan. Therefore, they were brought to the Police Station and handed over to PW-7 PSI More. According to his evidence, those persons were pretended to go for urination and were standing by the side of the vehicle. However, these facts are not corroborated by the evidence of PW-1 Police Constable Bodare.

9. PW-4 Police Constable Dhumal, who was working as Driver on the Mobile Van, has admitted in the evidence that he cannot identify either Applicant No.1 or Applicant No.2 or even the muddemal property shown to him in the Court. According to the evidence of PW-7 PSI More, he had made Panchanama in the Police Station. Moreover, PW-5 Panch

Sadanand Bharati admitted by PW-1 Police Constable Bodare, is a habitual Panch and in his cross-examination, he has admitted that he does not know about the contents of the Panchanama and at the time of recording Panchanama, Applicants were not present in the Police Station. According to his evidence, Police even did not show him the articles, which were seized under Panchanama. He has signed on the said Panchanama merely on the say of the Police. PW-6 another Panch Sanjay Bijlani has also not supported the prosecution case. According to him, Police made him to sign on the paper and, therefore, he has signed on it, but he does not know the contents thereof.

10. Thus, in this case, the evidence of independent Panchas is not available to prove that the alleged stolen articles were recovered from the possession of the Applicants. There is also no consistency as to whether the Panchanama was made at the spot or at the Police Station. There is also discrepancy as to the manner in which the Applicants were found and brought to the Police Station. As per evidence of PW-1 Police Constable Bodare and PW-3 Police Constable Patil, the Applicants were caught at 4:45 am. They were immediately brought to the Police Station. However, the Station Diary Entry was made at about 11:15 am. The F.I.R. was registered in the evening at about 4 pm.

11. In view of all these fatal lacunae in the prosecution case, it cannot be said that the prosecution has succeeded in proving its case against the Applicants beyond reasonable doubt; especially, considering that the stolen articles were not brought before the Trial Court and they are not identified by any of the Panch Witnesses or other witnesses at the time of trial.

12. As a result, this Revision Application succeeds and conviction of the Applicants, as recorded by the Trial Court and confirmed by the Sessions Court, stands quashed and set aside. Applicant Nos.1 and 2 are acquitted of the offence punishable under Section 379 r/w. 114 of IPC. Their Bail Bonds stand cancelled.

13. The Revision Application is allowed in above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]