

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.88 of 2017

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Rajnath Mushar, Son of Jaishree Mushar, R/o Village Sekhawa,
P.S. Bhabua, District Kaimur at Bhabua.

.... Petitioner/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Adv.

For the Respondent/s : Mr. R.B. Roy 'Raman', APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 19-07-2017

The petitioner, after having been convicted of the offence punishable under Section 411 of the Indian Penal Code (*hereinafter referred to as the 'IPC'*), by the learned Judicial Magistrate, Ist Class, Bhabua, in Trial No. 98 of 1992, arising out of G.R. No. 116 of 1981, was sentenced to undergo rigorous imprisonment for three (3) years, by judgment and order, dated 29.04.1992. Learned Additional Sessions Judge-VI, Kaimur at Bhabua, by his



judgment and order, dated 17.08.2016, passed in Cr. Appeal Nos. 42 of 1992/30 of 2016, has confirmed the said order, dated 29.04.1992, of conviction and sentence.

2. Briefly narrated, the case of the prosecution is that miscreants committed theft in the house of the informant and took away suitcase, containing ornaments, cloths and other materials. They are said to have committed theft of other house hold materials also available in the house, amounting to a sum of Rs. 20,000/-, which the informant realized when he got up in the morning.

3. It appears that on the basis of raid conducted by the police, stolen articles, including jewelries and other materials, were recovered from the house of five persons, including this petitioner. Jewelries, ornaments and other valuable materials were recovered from other persons, whose names cropped up in the course of investigation. From the petitioner's house, one used Dhoti, Shirt and Khakhi Pant were recovered. The articles recovered from the house of the petitioner were not put on T.I. Parade. However, the informant is said to have identified the articles, so recovered, in course of investigation before the Investigating Officer of the case.

4. Learned counsel, appearing on behalf of the petitioner, has submitted that the articles, which were



recovered from the house of the petitioner, could not be conclusively said to have been proved to be stolen properties, since the said articles were not described in the First Information Report. He has submitted that said articles ought to have been put on T.I. Parade, which was not done by the police, which too vitiates the investigation and the case of the prosecution.

5. He has next submitted that there is no evidence to show that the petitioner had participated in commission of theft, rather the petitioner has been acquitted of the charge punishable under Sections 457 and 380 of the IPC. According to him, in that background, in order to prove the charge punishable under Section 411 of the IPC, it was obligatory for the prosecution to establish that the petitioner had dishonestly received the said articles, knowing or having reason to believe the same to be stolen articles.

6. I have perused the evidence on record. There is no evidence to the effect that the petitioner had received the said articles alleged to have been recovered from his possession, dishonestly knowing or having reason to believe the same to be stolen. Section 411 of the IPC reads thus:-

"411. Dishonestly



receiving stolen property.-

Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

7. In order to establish charge under Section 411 of the IPC, following must be established:-

(i) the property found in possession of an accused must be stolen;

(ii) the accused received the property or retained it with knowledge that the articles recovered from his possession were stolen; or he had reason to believe that the articles were stolen property.

There is absolutely no evidence to the effect that the articles, which were said to be recovered from the petitioner's possession, were received by him dishonestly, knowing them to be stolen properties.

8. In my view, the prosecution miserably failed to establish charge under Section 411 of the IPC, on the basis of evidence adduced at the trial, inasmuch as the essential ingredients of Section 411 of the IPC could not be proved. The conviction of the petitioner of Section 411 of



the IPC, recorded by the courts below, is unsustainable.

9. This criminal revision application is, accordingly, allowed. The impugned orders, dated 17.08.2016 and 29.04.1992, are set-aside. The petitioner stands acquitted of the said.

10. The petitioner, above named, is discharged from the liabilities of bail bonds.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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