

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Revision No.730 of 2017**

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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1. Md. Sanjari @ Sanjari, Son of Md. Aftab @ Md. Aftab Alam, resident of Village- Gangari, P.S. Kothi (Imamganj), District- Gaya.
  2. Shahzad Shah, Son of Farukh Sah, resident of Village- Malhari, P.S. Kothi (Imamganj), District- Gaya.

.... .... Petitioners

Versus

The State of Bihar.

.... .... Respondent

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**Appearance :**  
For the Petitioners : Mr. Murari Narain Chaudhary, Advocate  
For the State : Mr. Nagendra Prasad, A.P.p.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date: 18-08-2017**

This revision application is preferred against the judgment dated 19.6.2017 passed in Cr. Appeal No.6 of 2017 by learned Sessions Judge, Madhubani whereby affirmed the conviction of the petitioners under Sections 420/34, 379 and 411 of the Indian Penal Code passed by the trial court but acquitted from charges under Sections 401, 419/34 of I.P.C. also acquitted Md. Sanjari from charge under Section 411 of I.P.C. but sentenced them to undergo three years of simple imprisonment for committing offence under Sections 379 and 420 of I.P.C. for only offence and fine of Rs.1,000/- and in case



of default for making payment of fine to further undergo simple imprisonment for one month and in addition to that Shahzad Shah was sentenced to undergo simple imprisonment of three years for committing offence under Section 411 of I.P.C. but directed that sentences shall run concurrently.

2. Learned counsel appearing on behalf of the petitioners submits that there is no any wrongful loss caused to the informant of this case as the A.T.M. of the informant was not used by the accused persons rather by way of mistake Shahzad Shah exchanged the A.T.M. of the informant. Another alternative argument of the learned counsel for the petitioners is that it was a first offence of the petitioners and they are young persons of 28 years of age but the maximum punishments have been awarded to them under Sections 379 and 411 of I.P.C. in fact, the offence under Section 420 of I.P.C. is not attracted as there was no inducement on behalf of the accused persons for delivery of the A.T.M. rather it was a case of simple theft and they have been in custody since 29.11.2015.

3. Learned counsel for the State submits that the prosecution has proved its case beyond all reasonable doubt.



4. Having considered rival submissions and on perusal of record, this Court finds that the prosecution has not proved the case under Section 420 of I.P.C. as there is absence of any inducement by the accused persons rather it is a case of theft however the prosecution has proved the charges under Sections 379 and 411 of I.P.C. beyond all reasonable doubts against Shahzad and against Md. Sanjari under Section 379 of I.P.C. only though the accused persons are acquitted of charges under Section 420 of I.P.C. Since the petitioners are young persons so awarding maximum punishment of three years for committing theft and keeping the stolen property is on excessive side. It is the first conviction of both accused persons so their sentence is reduced to the period already undergone in custody. However, Shahzad is required to deposit the fine amount of Rs.1,000/- each for committing offence under Sections 379 and 411 of I.P.C. and petitioner Md. Sanjari is also fixed Rs.1,000/- for committing offence under Section 379 of I.P.C. otherwise they would further undergo simple imprisonment for one month having depositing the fine amount, the petitioners are directed to be released forthwith, if not wanted in any other case and in case of



default of making payment of fine of Rupees One Thousand both would further undergo simple imprisonment of one month and thereafter be released if not wanted in any other case.

The punishment is modified accordingly and the revision petition is partly allowed.

**(Arun Kumar, J)**

N.H./-

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