

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.39 of 2004

Order Reserved on : 9.2.2017

Order Passed on : 19.4.2017

Vinod Kumar Chouhan, S/o Shyamlal Chouhan, aged about 24 years, occupation service (Salesman) Aadim Jati Sewa Sahakari Samiti, Gourpar, resident of Village Gourpar, Chowki Jobi, Thana Kharsia, District Raigarh (Chhattisgarh)

---- Petitioner

versus

The State of Chhattisgarh through the District Magistrate Raigarh, Chhattisgarh

--- Respondent

For Petitioner	:	Smt. Indira Tripathi, Advocate
For State/Respondent	:	Shri Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Anil Kumar Shukla

C.A.V. ORDER

1. Being aggrieved by the judgment dated 19.1.2004 passed in Criminal Appeal No.8 of 2003 by the 2nd Additional Sessions Judge, Raigarh, arising out of the judgment dated 10.1.2003 passed in Criminal Case No.531 of 2002 by the Judicial Magistrate First Class, Raigarh, the accused/Petitioner has preferred the instant revision under Section 397/401 of the Code of Criminal Procedure. By the judgment dated 19.1.2004, the learned Additional Sessions Judge has convicted and sentenced the Petitioner as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 380 IPC	Rigorous Imprisonment for 1 year and fine of Rs.500/-, in default of payment of fine, to further undergo imprisonment for 30 days

2. Case of the prosecution, in brief, is that Complainant Aarang Ram (PW-1) was employed as a Seller in Adim Jati Sahakari Samiti situated in Village Khamhar (henceforth 'the Society'). On 1.4.2002, at about 4:00 p.m., the accused/Petitioner came to the office of the Society to purchase kerosene. At that time, the Complainant was working in the office of the Society and Peon of the Society Kapoorchand (PW-3) was present out of the office of the Society. The Complainant had kept his own cash of Rs.4,030/- near him in a plastic bag. The Petitioner came there and asked to supply him 800 litres of kerosene. On this, the Complainant, to measure the kerosene kept out of the office of the Society, came out of the office, but the Petitioner remained present and sit in the office of the Society. The Complainant measured 800 litres of kerosene, returned inside the office and asked the Petitioner for payment of the bill of Rs.7,296/- for the 800 litres of kerosene. The Petitioner paid a sum of Rs.6,000/- only and saying that he would bring remaining amount for payment, went on his bike towards Gorpar. After the Petitioner's going away, the Complainant, for keeping the sum of Rs.6,000/- in his plastic bag, opened the bag. On opening the bag, he found that his sum of Rs.4,030/-, which was already kept in the bag by him, was not there and was missing. Even after making search, the amount was not found there. Since the Petitioner was sitting alone in the office of the Society while the Complainant was measuring kerosene, the Complainant suspected on the Petitioner. After sometime, the Complainant narrated about the incident and the Petitioner to the Office Peon Kapoorchand (PW-3), the President of the Society Meghnath (PW-4) and the Manager of the Society Laxminarayan Patel. They also searched for the missing sum but could not trace

it. In the meanwhile, Savitribai (PW-2), a resident of Village Khamhar told the Complainant that on the date of incident itself, at about 4:30 – 5:00 p.m., the Petitioner had come to her and given her a sum of Rs.4,000/- and thereafter had gone away, but after some time, he returned to her and took back the amount of Rs.4,000/- from her. The amount of Rs.4,030/-, missing from the plastic bag of the Complainant, was in the denomination of Rs.50 x 80 and Rs.10 x 3. The Complainant lodged a report of the incident in the concerned Police Chowki on 2.4.2002 on which an investigation took place into the offence. Memorandum statement (Ex.P-3) of the Petitioner was recorded and at his instance, a sum of Rs.4,030/- in the denomination of Rs.50 x 80 and Rs.10 x 3 was seized from the locker of his almirah kept in his house vide Ex.P-4. Statements of witnesses were recorded. Thereafter, a charge-sheet was filed against the Petitioner under Section 380 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Raigarh.

3. The Judicial Magistrate First Class, Raigarh conducted trial and by the judgment dated 10.1.2003 convicted the Petitioner for the offence under Section 380 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 1 year and to pay fine of Rs.500/- with default stipulation. Being aggrieved by the judgment of the Trial Court, the Petitioner preferred an appeal in the Court of Session at Raigarh. The 2nd Additional Sessions Judge, Raigarh by the judgment dated 19.1.2004 dismissed the appeal of the Petitioner and affirmed the judgment of conviction and sentence passed by the Trial Court.
4. The Petitioner has preferred the instant revision against the

judgment dated 19.1.2004 passed in Criminal Appeal No.8 of 2003 by the 2nd Additional Sessions Judge, Raigarh.

5. Learned Counsel appearing for the Petitioner argued that the conviction and sentence imposed upon the Petitioner is contrary to the law and facts. The Petitioner has been convicted by the Trial Court on the basis of suspicion only which cannot be based for a legal proof against the Petitioner. The case of the prosecution has not been proved beyond reasonable doubt. Therefore, the instant revision may be allowed and the Petitioner may be acquitted of the charge framed against him.
6. Learned Counsel appearing for the State/Respondent, opposing the arguments advanced by Learned Counsel for the Petitioner, submitted that the judgment of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court is impeccable and the same does not warrant any interference by this Court because the theft currency notes were seized from the almirah of the house of the Petitioner at his instance itself.
7. The questions which arise for consideration in this revision are thus:
 - (i) Whether the Petitioner committed theft of a sum of Rs.4,030/- kept in the office of the Society from the possession of the Complainant and without his consent for his wrongful gain?
 - (ii) Whether the judgment of conviction and sentence passed by the Trial Court and affirmed by the Appellate Court deserves to be set aside from the perspective of correctness, legality and propriety?

8. The prosecution examined Complainant Aarang Ram (PW-1), Savitribai (PW-2), Kapoorchand (PW-3), Meghnath (PW-4) and Ramdayal (PW-5). The Petitioner examined Lalit Singh (DW-1) in his defence. In his statement under Section 313 Cr.P.C., the Petitioner claimed that he is innocent and has been falsely implicated by the Complainant due to an old enmity.
9. Aarang Ram (PW-1) has deposed that he was employed as a Seller in the Society since 1998. On 1.4.2002, at about 4:00 p.m., he was sitting in the office of the Society. At that time, Peon of the office Kapoorchand (PW-3) was selling kerosene to the villagers from a tanker of kerosene kept adjacent to the office of the Society. The witness further deposed that at the same time, the Petitioner entered the office of the Society to purchase kerosene and sat on a chair kept beside his chair. He further deposed that he had kept his own cash of Rs.4,030/- just beside him in a plastic bag. The cash of Rs.4,030/- kept in the plastic bag was in the denomination of Rs.50x80 and Rs.10x3.
10. Aarang Ram (PW-1) has further deposed that the Petitioner asked him to give him 800 litres of kerosene. On this, he went out of the office of the Society to measure 800 litres of kerosene for selling to the Petitioner and after measuring the kerosene he again entered back the office of the Society. The sale price for 800 litres of kerosene was Rs.7,296/-, but the Petitioner paid him only Rs.6,000/- and said that rest will be paid by him later on. After going of the Petitioner, when he looked for the plastic bag to keep the cash paid by the Petitioner, he found that the cash of Rs.4,030/- which was already kept by him in the said plastic bag was not in the plastic bag and was missing from there. He

searched for the sum here and there, but he could not find the same. This witness has also deposed that when he had gone out of the office of the Society to measure 800 litres of kerosene for the Petitioner, at that time, the Petitioner was sitting alone in the office of the Society. He also narrated the incident of theft of his cash of Rs.4,030/- to the President of the Society Meghnath (PW-4) and Peon of the Society Kapoorchand (PW-3). Later on, the Manager of the Society Laxminarayan Patel also came there. After half an hour, the Petitioner came back to the office of the Society and made cash payment of Rs.1,296/- towards the balance of sale price of kerosene. The Manager, President and Peon of the Society made inquiries from the Petitioner, but he replied that he did not commit theft of the cash. This witness has further deposed that Savitribai (PW-2) told President of the Society Meghnath (PW-4) that the Petitioner had given her 80 currency notes in the denomination of Rs.50/- to keep with her. This has been deposed by Savitribai (PW-2) also in her deposition at paragraph 1.

11. Aarang Ram (PW-1) has deposed that he had reported the incident to the police on 2.4.2002. In cross-examination, this witness has denied the suggestion that he used to keep the money of the Society in the *Galla* (Money Box). He himself deposed that he used to keep the money in the plastic bag. He also denied that the Petitioner had also come out of the office of the Society with him when he had come out of the office to measure kerosene for the Petitioner. He himself deposed that the Petitioner was sitting inside the office of the Society.
12. Kapoorchand (PW-3) is the Peon of the Society. He has deposed that the Petitioner had gone to Aarang Ram (PW-1) in the office of

the Society. For measuring kerosene in the drum of the Petitioner, on being called by him, Aarang Ram (PW-1) had come out of the office of the Society and at that time, the Petitioner was sitting inside the office of the Society. This statement of the witness has not been rebutted in cross-examination. Therefore, it is proved that when Aarang Ram (PW-1) had come out of the office of the Society to measure kerosene for the Petitioner, the Petitioner was sitting inside the office of the Society.

13. Kapoorchand (PW-3), in his deposition, has proved the memorandum statement (Ex.P-3) of the Petitioner and the seizure of the sum of Rs.4,030/- (Ex.P-4). He has deposed that at the instance of the Petitioner, a sum of Rs.4,030/- in the denomination of Rs.50 x 80 and Rs.10 x 3 was seized from the locker of his almirah kept in his house vide Ex.P-4.

14. Ramdayal (PW-5) has also deposed that 80 currency notes in the denomination of Rs.50 and 3 currency notes in the denomination of Rs.10 were seized from the house of the Petitioner. This witness has admitted his signatures on Ex.P-3 and P-4.

15. Thus, from the above evidence, it is proved that —

(1) On the date of incident, the Petitioner had gone to the Complainant's Society for purchasing kerosene.

(2) The Complainant, at that time, was sitting inside the office of the Society.

(3) When the Complainant had come out of the office of the Society to measure 800 litres of kerosene for the

Petitioner, at that time, the Petitioner was sitting inside the office of the Society.

(4) Soon after the incident of theft, the Complainant had informed the Peon, President and Manager of the Society about the incident of theft and had also expressed his doubt over the Petitioner.

(5) In his FIR, the Complainant had lodged that the theft sum was of Rs.4,030/- in the denomination of Rs.50x80 and Rs.10x3.

(6) After the incident, Savitribai (PW-2) had informed Meghnath (PW-4) about keeping of 80 currency notes in the denomination of Rs.50/- with her by the Petitioner, which is proved from the depositions of Savitribai (PW-2) and Meghnath (PW-4).

(7) On the basis of memorandum statement (Ex.P-3) of the Petitioner and the seizure (Ex.P-4) made at his instance, which are signed and proved by Kapoorchand (PW-3) and Ramdayal (PW-5), seizure of the sum of Rs.4,030/- in the denomination of Rs.50x80 and Rs.10x3 from the possession of the Petitioner is proved.

- 16.** From the above discussion, it is proved that while making the seizure, finding of the sum of Rs.4,030/- in the denomination of Rs.50x80 and Rs.10x3 from the possession of the Petitioner was not a co-incident, but was seizure of the theft sum only. The Petitioner has also not offered any explanation regarding availability of the said currency notes with him. Thus, from the

above evidence, offence of Section 380 IPC is proved against the Petitioner.

17. Consequently, the revision is dismissed and the conviction and sentence imposed upon the Petitioner is affirmed.
18. It is reported that the Petitioner is on bail. He shall be taken into custody for serving out remaining sentence, if any.
19. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Anil Kumar Shukla)
JUDGE