

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.567 of 2015**

- Sevaram S/o Lakhani Lal Nishad Aged About 25 Years R/o Village Usarwara, Police Station Gurur, Tehsil Gurur, Civil And Revenue District Balod, Chhattisgarh

---- Applicant

Versus

- The State Of Chhattisgarh S/o Through: Station House Officer Dhamtari, District Dhamtari, Chhattisgarh

---- Respondent

For Applicant	: None present.
For respondent/State	: Shri Anil S Pandey, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****11.12.2017**

1. This revision has been preferred against the order dated 20.4.2015 passed by Sessions Judge, Dhamtari (CG) in Criminal Appeal No.46/2015 wherein the said Court affirmed the judgment of conviction and order of sentence passed by Chief Judicial Magistrate, Dhamtari in Criminal Case No.344/2014 wherein the said Court convicted the revisioner under Sections 457 of the Indian Penal Code and sentenced to undergo RI for three years and to pay fine of Rs.500/- and also convicted him under Section 380 IPC and sentenced him to undergo RI for two years and to pay fine of Rs.200/- with default stipulations.

2. As per the prosecution case, complainant Gajendra Kumar Sahu was the owner of one mobile shop in the name and style of Golden Mobile Shop at Dhamtari. It is alleged that after

commission of house breaking on 17.3.2014 to 18.3.2014, computer, LCD, UPS, sound box, mobile sets and other articles relating to mobile sets were stolen from the said shop. On the basis of the disclosure statement of the accused/appellant, certain articles were seized from him but he was unable to explain the possession of the certain things. The matter was investigated by the police and after investigation, charge sheet was filed before the trial Court. The accused/appellant did not plead guilty and thereafter trial was conducted after examination of the complainant. After hearing the parties, the trial Court convicted and sentenced the accused/appellant as aforementioned. Thereafter the accused/appellant filed appeal before the Sessions Judge, Dhamtari, which was also dismissed. The instant revision has been filed on the following grounds:-

(1) There is no evidence that the articles seized were the same stolen from the shop of the complainant as there is no identification regarding seized articles.

(2) The articles are common and are easily available in the shop, unless specific identification mark is shown it cannot be held that it is the same articles which were stolen from the shop of the complainant.

(3) The complainant has not identified the articles during investigation or before the court, therefore, finding recorded by the trial Court is not in the fitness of procedure as well as in the fitness of legal aspect.

3. Learned counsel for the State submits that the finding arrived at by the trial Court is strictly in accordance with law and the same is not liable to be interfered with invoking jurisdiction of the revision.

4. To substantiate the charge under Sections 457 and 380 IPC, the prosecution has to establish the facts as mentioned below:

(1) There was house breaking in the shop on the date of incident.

(2) Certain articles were stolen on the date of incident from the shop of the complainant.

(3) Articles were seized from the possession of the accused/applicant.

(4) Seized articles were same which were stolen from the shop of the complainant and the applicant has failed to explain his possession over the articles stolen from the shop of the complainant.

5. Gajendra Kumar (PW-1) deposed that he had closed his shop on 14.3.2014 till 17.3.2014 on account of Holi festival and when he opened his shop on 18.3.2014 he found that lock of the his shop was broken and computer, LED, UPS, 14 sets of mobile phones and some currency notes were stolen. As per the statement of this witness, he reported the matter to the Police and

the police investigated the matter and seized bills from his possession.

6. Rajesh (PW-2) deposed that three mobile phones, computer and articles were seized from accused/appellant. Peetambar Puri Goswamy (PW-3) confirmed the seizure of the three mobile phone from the possession of the applicant. Factum of seizure is also proved by Head Constable Tikaram Sahu (PW-6).

7. Though the seizure of the articles from the possession of applicant is established by the prosecution, but no identification of the said articles was conducted in the presence of the complainant. Before the Court, the complainant did not identify articles seized from the possession of the applicant to be his articles stolen from the shop. No one is examined by the prosecution to substantiate that the articles seized from the possession of the accused applicant were the same which were stolen from the shop of the complainant. Factum of identification is not established because the evidence on this count is lacking.

8. Gajendra Kumar (PW-1) deposed in his cross-examination that he identified the articles in Police Station but his statement is not acceptable because no articles were mixed during any proceedings of identification. In this way it is not established that the seized articles were the same which were stolen from the shop of the complainant.

9. As per Section 114 of the Indian Evidence Act, 1872 when it is established that someone is in possession of article stolen from other place, then only he is under obligation to explain his possession. But in the present case, identification of the articles is not established and therefore the accused applicant is not under obligation to explain the same. Again there is no evidence that anyone has seen the applicant in the shop of the complainant. Direct evidence regarding entering into the shop is lacking, he cannot be connected on the basis of seized articles because the same is not established to be the articles of the complainant. The prosecution has not established that the accused/applicant committed the house breaking and again committed theft of the articles as mentioned above.

10. Accordingly, the revision is allowed. Conviction and sentence passed by the Court below is hereby set aside. The accused/applicant is acquitted of the charges under Sections 457, 380 of IPC. The fine amount, if deposited by the applicant, be returned to him. The applicant is reported to be on bail. His bail bonds stand discharged.

Sd/-
(Ram Prasanna Sharma)
JUDGE