

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 194 OF 2004

Hiraman Kachru Suryawanshi
Age: 29 years, Occu.: Hawkar,
R/o Lane No. 23, Baijipura, Aurangabad.

..APPLICANT

VERSUS

State of Maharashtra
Through M.I.D.C. Police Station,
Aurangabad.

..RESPONDENT

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Mr. M.P. Kale, Advocate for applicant.
Mr. S.J. Salgare, A.P.P. for respondent - State.

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**CORAM : T.V. NALAWADE, J.
DATED : 04th JANUARY, 2017**

ORAL JUDGMENT :

1. The revision application is filed to challenge the judgment and order made in R.C.C. No. 153 of 2002 which was pending in the Court of Judicial Magistrate First Class, Aurangabad and also to challenge the decision given in Criminal Appeal No. 53 of 2002 which was pending in the Court of Ad-hoc Additional Sessions Judge, Aurangabad. The Trial Court had convicted the petitioner for the offence punishable under Section 379 read with 34 of the Indian Penal Code and this conviction and sentence is confirmed by the First Appellate Court. Heard both sides.

2. The report was filed in the M.I.D.C., CIDCO Police Station, Aurangabad against the present applicant and one more accused for offence punishable under Section 379 read with 34 of the Indian Penal Code. The present applicant and another accused were caught red handed in the premises of G.S.T. Company, CIDCO, Aurangabad when they were taking away the spare parts of machinery of the company worth Rs.5,000/-. This incidence took place in the night time at about 4.10 a.m. of 13th November, 2001 and the incidence was witnessed by watchmen and other employees of the factory. Both accused were produced before Police with stolen property and then crime was registered against the present applicant and another accused. Panchanama of stolen property was prepared and statements of persons who were working in the factory, who had caught present applicant and another accused red handed were recorded.

3. The charge-sheet was filed against the present applicant and another accused. Another accused pleaded guilty. He was sentenced to suffer imprisonment for seven months. As present applicant pleaded not guilty, the case was tried against him. The prosecution examined the watchmen and other employees. Watchmen Vasant and Tukaram gave evidence against present applicant. P.W. 3 – Manohar gave evidence that

two watchmen produced present applicant and another accused with stolen property before the police and panchnama at Exhibit 24 was prepared accordingly. P.W.5 – Harish Ingale, A.S.I. has given evidence that present applicant was produced by aforesaid watchmen in police station alongwith stolen property and he made investigation of the case.

4. The F.I.R. was given immediately and two panchnamas like spot panchanama and seizure panchanama were also prepared on the same day. This record is duly proved.

5. The cross-examination of witnesses shows that nothing could be brought on record to create probability that present applicant was falsely implicated in the case. There was no reason whatsoever to give false report against the present applicant and even suggestion in that regard was not given to these witnesses. In the statement given under Section 313 of the Code of Criminal Procedure, accused only denied the evidence given by aforesaid witnesses.

6. The aforesaid evidence is considered by the Trial Court and also by the First Appellate Court. There is nothing on record on the basis of which it can be said that some probability was created by present

petitioner in his favour or some material is not considered by the Courts below which can be used in favour of the present petitioner. There is nothing illegal in the decision given.

7. This Court holds that it is not possible to interfere in the decision given by the Judicial Magistrate First Class, Aurangabad which is confirmed by the First Appellate Court. The learned Counsel for petitioner submitted that sentence may be reduced to make it for the period undergone. This submission is not at all acceptable. To the accused, who pleaded guilty, imprisonment of seven months was given as sentence, but to present applicant sentence for imprisonment of six months is given. In view of this circumstance, this Court holds that it is not possible to reduce the sentence also. In the result, revision application stands dismissed.

(T.V. NALAWADE, J.)

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