

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 590 of 2008**

- Vijay Jain, S/o Sagarmal Jain, aged about 23 years, R/o. Village-Chikhalakasa, P.S. Rajhara, Tahsil- Balod, District Durg Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through S.H.O. P.S. Rajhara, District Durg Chhattisgarh.

---- Respondent

For Applicant	:	Mr. A.K. Prasad, Adv.
For State	:	Ms. Reena Singh, PL

Hon'ble Smt. Justice Rajani Dubey**Order on Board****20.09.2019**

1. The present revision petition has been filed by the applicant against the order dated 26.08.2008 passed by Additional Sessions Judge (FTC) Balod, District Durg, in Criminal Case No. 27/2008, whereby the learned trial Court has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate, Balod, vide its judgment dated 25.02.2008 in Criminal Case No. 590/2005 for the offence punishable under Sections 457 & 380 of IPC and sentenced him to undergo R.I. for 6-6 Months and to pay fine of Rs. 200/- 200/- with default stipulation respectively.

2. Brief facts of the case are that, on 07.04.2005 at about 2.00 AM, applicant entered the house of complainant Joai Esai and committed theft of one B.P.L. T.V., Walkman, Electric Iron, Mixer, two jars, on Table Fans and other household articles including golden ornaments. On that basis, a report was lodged by the complainant against the unknown person, and after completion of investigation, charge-sheet has been filed against the applicant and charges were framed by the trial Court under Sections 457 &

380 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 13 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing both the parties, learned Judicial Magistrate vide its impugned judgment of conviction and order of sentence dated 25.02.2008 convicted the applicant/accused for the offence punishable under Sections 457 & 480 of IPC and sentenced him as mentioned above in para 1 of this order. This order was appealed by the applicant and in this appeal learned Appellate Court has affirmed the conviction and sentenced of the applicant. Hence, this revision petition.

5. Learned counsel for applicant submits that learned trial Court has framed the charges in a very mechanical manner which is contrary to the law, facts and circumstances of the case and deserves to be quashed. There is no eye witness in this case. The whole case is based upon memorandum and seizure and memorandum witnesses Goverdhan (PW-3) and Rajkumar (PW-10) have not supported the prosecution case. Furthermore, no identification of the stolen articles has been conducted by the prosecution. As, from the evidence of witnesses it is apparent that no case is made out against the applicant and he has been falsely implicated by the prosecution to prove their case, the conviction and sentence imposed upon him is liable to be set-aside.

6. On the other hand, learned counsel appearing on behalf of the State has supported the impugned order of the Court below.

7. Heard learned counsel for the parties and perused the material on record including the impugned order.

8. Complainant Joai Fransis (PW-1) stated in his evidence that on the date of incident he had gone to his in-laws house, Kondagaon, and no one was in the house. The house was locked. He was informed by his neighbours about the theft over phone.

Santosh (PW-2) also stated that he has informed his brother-in-law about the theft. After that, complainant lodged FIR (Ex.P/1) before the concern Police Station. Conversely, Goverdhan (PW-3) and Rajkumar (PW-10), memorandum and seizure witnesses, have not supported the prosecution case and to certify their statements, put their signature on Ex. P/7 to Ex. P/10.

9. It is clear from the FIR (Ex.P/1) that FIR was lodged against the unknown person and memorandum & seizure witnesses have not supported the memorandum (Ex.P/7), seizure (Ex. P/7- P/10) and Search Panchnama (Ex.P/11). That apart no identification of the stolen articles have been conducted by the prosecution. Thus, there is no legally admissible evidence against the applicant and the prosecution has failed to prove its case beyond all reasonable doubt.

10. In view of aforesaid discussion, facts of the case, order dated 26.08.2008 passed by trial Court in respect of applicant Vijay Jain is liable to be set-aside.

11. Accordingly, the revision petition filed by the applicant is allowed. Impugned judgment of conviction and order of sentence is set-aside and the applicant is acquitted of the charge under Sections 457 & 380 of I.P.C.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sabu