

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 496 of 2010

Mujib Khan, S/o Saeed Khan, aged about 19 years, R/o. Chandni Chowk,
Nehru Nagar, Police Station Kotwali, Raipur, Tahsil & District Raipur, CG.

---- **Applicant**

Versus

State of Chhattisgarh, through District Magistrate, Police Station Purani
Basti Raipur, District Raipur, CG.

---- **Respondent**

For Appellant : Mr. K.K. Dewangan, Advocate (Legal Aid)

For State/Respondent : Mr. Sameer Sharma, Dy. GA

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

10.12.2020

It is alleged that on 22.08.2009 at about 11.30 pm after returning from his work place he parked his Bajaj Pulsar motorcycle bearing registration No. CG 04/CR-5684 in front of his house and when on the next day he saw, it was not found in the place where it was parked. A report to this effect was made by the complainant Rohit (PW-1) against the unknown person, on the basis of which an offence under Section 379 IPC was registered. Subsequently, on 31.08.2009 the police acting upon a secrete information to the effect that someone was trying to dispose of a motorcycle in the MEKAHARA cycle stand, the police nabbed the accused/applicant herein, took him to the concerned Crime Branch where on his memorandum the motorcycle in question was seized from the other accused/Mohisin under Ex.P-6 in presence of the witnesses. After investigation charge-sheet was filed followed by framing of charge under Section 379 IPC.

2. Learned trial Court vide judgment impugned dated 09.04.2010 passed in Criminal Case No. 651/2009 convicted both the accused/persons under Section 379 IPC and sentenced both of them to

undergo RI for 2 years. Learned Lower Appellate Court vide judgment impugned dated 16.06.2010 passed in Criminal Appeal No. 36/2010 maintained the finding of conviction but reduced the sentence to RI for one year from that on 2 years. Hence this revision.

3. Counsel for the applicant submits that both the Courts below have not considered the evidence of the witnesses in its proper perspective and therefore the judgment impugned is liable to be set aside. He further submits that no independent witness has been examined by the prosecution and merely on the basis of statement of the police people the judgment impugned is based, which cannot be allowed to hold the ground. The alternative prayer made by the counsel for the applicant is for reduction of the sentence to the period already undergone in case this Court is not inclined to interfere with the conviction part of the judgment impugned. State counsel however, supports the judgment impugned.

4. Of course, the seizure witnesses Vinod Sharma (PW-2) and Jitendra Sharma (PW-3) have not supported the case of the prosecution but they have admitted their signature on the seizure memo Ex. P-6. This apart, the motorcycle in question was seized on the memorandum of the accused persons and therefore, the presumption under Section 114 of the Indian Evidence Act comes into play. It is further settled legal position that if the evidence available on record speaks about the involvement of the accused persons, mere non-examination of other independent witnesses, does not adversely affect the case of the prosecution. Moreover, neither of the accused/applicant claimed his ownership over the said motorcycle seized on the memorandum of Ex. P-6 as no receipt or bill etc., in respect of it has been produced by him. The investigating officer has clearly mentioned that in all six motorcycles of various descriptions were seized from the possession of the accused persons including the applicant herein. This Court does not see any reason to differ from the findings

recorded by learned Lower Appellate Court as far as the conviction part of the judgment impugned is concerned. Accordingly, the conviction of the accused/applicant under Section 379 IPC is maintained. However, looking to the fact that the incident had taken place in the year 2009 and since then a considerable period of about 7 months has already gone by, in the opinion of this Court, no useful purpose is going to be served in further keeping him in detention any longer.

5. Revision is thus allow in part to the extend indicating above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan