

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No.546 of 2010

- Ganesh Gupta, S/o Shri Ramnarayan Gupta, Aged about 30 years, R/o Chameli Chowk Dhamtari, Tahsil and District Dhamtari, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through Station House Officer, Police Station Dhamtari, Chhattisgarh

---- Respondent

For Applicant	:	Shri Ajay Chandra, Advocate
For Respondent	:	Shri Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on board

11.12.2020

A bicycle belonging to the complainant namely Jitendra Sinha (PW-2) was stolen from Sai Mandir as it was kept unlocked. Subsequently, on the same day he came to know through Mahavir (PW-4) that it is the accused-applicant who had committed the theft of the said bicycle. Thereafter, he lodged report (Ex-P/1) on the basis of which offence under Section 379 IPC was registered. The investigation resulted in filing of the charge-sheet and framing of the charge against the accused-applicant under the said section.

2. Learned Magistrate vide its judgment dated 11.03.2010 passed in Criminal Case No.501/2008 found guilt of the accused-applicant duly proved and at the same time imposed the sentence of one year rigorous imprisonment on him. The said finding also

received an approval in appeal vide judgment impugned dated 11.10.2010 as a whole. Hence this revision.

3. Counsel for the accused-applicant submits that both the Courts below appear to have mis-directed themselves while recording the finding of conviction against the accused-applicant and therefore, the judgment impugned is required to be set aside. 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.

4. State counsel however supports the judgment impugned.

5. Apart from the evidence of complainant Jitendra Sinha (PW-2), the seizure of bicycle made under Ex-P/5 on the basis of memorandum of the accused-applicant Ex-P/4 also fortifies the case of the prosecution. From the evidence of PW-2 it is apparent that the bicycle was seen by Mahavir (PW-4) in the custody of the accused-applicant, though he had not seen him taking the same away. Seizure witness (PW-3) has also supported the case of the prosecution. The receipt of the bicycle is also manifest from the receipt/bill produced by the complainant which was reduced to writing in the form of seizure memo Ex-P/2. The accused-applicant on the contrary could not produce any documents such as bill/invoice to establish his ownership over the said bicycle in question. This apart, Investigating Officer has also stood by the investigation carried out by him. The concurrent findings recorded by both the Courts below so far as the conviction under Section

379 IPC does not appear to suffer from any legal flaw and therefore it is hereby maintained.

6. As regards sentence, the facts and circumstances of the case and detention of the accused-applicant in the crime in question for about 7 ½ months persuades this Court to reduce the sentence to the period for which he remained inside. Ordered accordingly.

7. The revision is thus allowed in part as indicated above.

Sd/-
(Vimla Singh Kapoor)
Judge