

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 310 of 2011**

- Chetan Yadav S/o Lachhu Yadav, aged about 20 years, R/o Ward No. 14, Pithora, P.S. Pithora, District Mahasamund (C.G.)

---- Applicant/Petitioner

Versus

- The State of Chhattisgarh, through the District Magistrate, Mahasamund (C.G.)

----State/Respondent

 For Applicant/Petitioner : Smt. Indira Tripathi, Advocate

 For Respondent /State : Shri C.B. Kesharwani, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J**Judgment on Board****20.10.2021**

1. Invoking revisional jurisdiction of this Court under Section 397 read with Section 401 of Cr.P.C., the accused/applicant herein has filed the instant criminal revision challenging the legality and propriety of the judgment dated 12.05.2011 passed by the Second Additional Sessions Judge, Mahasamund in Criminal Appeal No. 55/2011 affirming the judgment of conviction and order of sentence dated 11.01.2011 passed by the Judicial Magistrate First Class, Pithora, in Criminal Case No. 793/2010, whereby the applicant has been convicted for commission of offence punishable under Section 457 of IPC and sentenced to undergo R.I. for 2 years & fine of Rs.1,000/-, in default of payment of fine to undergo S.I. for two months and Section 380 of IPC and sentenced to undergo R.I. for 2 years & fine of Rs.1,000/-, in default of payment of fine to undergo S.I. for two months. It is also directed that both the sentences to run concurrently.
2. As per prosecution case, complainant namely Kawal Jeet Singh is running a shop in the name of Mahendra Automobile Motor Parts Shop at Bus Stand Pithora and on 05.10.2010 at about 09:30 pm after closing the shop when he went next day to open the shop, he found that some unknown person after

removing the *Khapara* from the slab side entered inside the shop and broke the almirah and committed theft of Rs.2,55,000/- from the almirah of the aforesaid shop. The complainant immediately lodged a report at Police Station Pithora and Crime No. 414/2010 under Sections 457 & 380 of IPC was registered. During investigation, memorandum of applicant was recorded in presence of witnesses namely Sattprit Singh (PW-2) and Gopal Pandey (PW-3) and pursuant to the memorandum statement of the applicant, Rs.1,01,150/-, one pair of silver anklet, one golden locket and one golden top were recovered from the possession of the applicant. During trial five prosecution witnesses namely Kanwaljeet Singh (PW-1), Sattprit Singh (PW-2), Gopal Pandey (PW-3), Aashish (PW-4) & Tikeshwar Hohta (PW-5) were examined and several documents were produced, however, the defence examined one witness namely Santu Yadav and no documents were produced.

3. Learned counsel for the applicant submits that the judgment of conviction recorded by the trial Court which was affirmed by the appellate Court is absolutely unsustainable and bad in law, as both the Courts below have committed grave illegality in relying upon the testimonies of Sattprit Singh (PW-2) and Gopal Pandey (PW-3), who are common witnesses of memorandum and seizure. In the circumstances, conviction of the applicant on merits is bad being perverse and contrary to record and consequently, sentences of two year R.I. and fine awarded to the applicant deserves to be set aside.

Alternatively, learned counsel for the applicant submits that if this Court finally comes to the conclusion that the applicant has rightly been convicted by the trial Court for offence under Sections 457 & 380 of IPC, considering the fact that the applicant is the first offender aged about 20 years at the time of incident, the incident took place in the year 2010,

sentence imposed upon applicant was two years of R.I. with default sentence and the applicant remained in jail for about six month, presently he is on bail, he has no criminal antecedents, he may be given the benefit of Probation of Offender Act, and sentenced to the period already undergone by him.

4. On the other hand, learned counsel for the State opposes the revision and submits that concurrent findings recorded by the Courts below holding the applicant guilty are findings of fact based on the evidence available on record. Therefore, the revision deserves to be dismissed.
5. Heard learned counsel for the parties.
6. PW-1 Kawal Jeet Singh proved this fact that theft was committed in his shop, he proved the F.I.R. (Ex.-P/1) and spot map (Ex.-P/2). There is no reason to disbelieve the evidence of PW-1.
7. PW-2 Sattprit Singh and PW-3 Gopal Pandey both are independent witnesses. They have proved the memorandum statement of the applicant vide Ex.-P/3 and seizure of Rs.1,01,155/- and other articles i.e. gold & silver from the applicant vide Ex.-P/4.
8. PW-4 Aashish has also proved that the applicant has purchased silver & gold articles from his shop. Therefore, the evidence of PW-4 has duly corroborated the evidence of PW-2 & PW-3 who are the witnesses of memorandum (Ex.-P/3) and seizure (Ex.-P/4).
9. PW-5 Tikeshwar Hohta, Head Constable, has recorded the memorandum statement of the applicant in the presence of the PW-2 & PW-3.
10. In the present case, the applicant examined one defence witness Santu Yadav as DW-1 who is brother of the applicant. DW-1 has stated that the police came to his house and inquired about the applicant. The room of his brother was locked, thereafter, the police broke the lock, entered the room of his brother and after searching the room, the police took some articles and

went from there. However, in the given facts and circumstances, the oral and documentary evidence available on record as discussed above, the evidence of defence witness (DW-1) does not inspire confidence of the Court and as such it is of no help to the applicant.

11. Thus, entire facts and circumstances clearly established that the applicant has committed theft in the shop of the complainant, there is no reason to disbelieve the evidence of witnesses, material available on record and therefore, finding recorded by two Courts below holding the applicant guilty for the offence under Sections 457 & 380 of IPC is well merited. I do not find any illegality in the same and it is hereby affirmed.

12. As regards the sentence, considering the entire facts and circumstances of the case, the fact that the applicant is the young offender of 20 years on the date of incident, he has no criminal antecedent, the provisions of Section 6 of the Probation of Offenders Act, 1958 which provides restriction on imprisonment of offenders under twenty-one years of age, the fact that the applicant has remained in jail for about six months and presently on bail, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him while maintaining the fine sentence imposed by the trial Court.

13. In the result, the revision is allowed in part. While maintaining the conviction of applicant under Sections 457 & 380 IPC, his jail sentence is reduced to the period already undergone by him. However, the fine amount imposed on him with default stipulation by the trial Court shall remain intact.

Sd/-

(Gautam Chourdiya)
Judge