

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

**CRIMINAL REVISION APPLICATION NO.72 OF 2021
AND
CRIMINAL APPLICATION NO.611 OF 2021**

Amol Madhukar Baviskar,
Age : 38 years, Occ. Labour,
r/o. Hari Vitthal Nagar, Jalgaon

..Applicant

Vs.

The State of Maharashtra,
Through its Zilla Peth Police Station,
Jalgaon

..Respondent

Mr.V.B.Patil, Advocate for applicant
Mr.S.N.Kendre, APP for respondent

CORAM : R.G. AVACHAT, J.

DATE : JUNE 21, 2021

ORDER :-

The challenge in this Revision Application is to the judgment of conviction and order of sentence passed by learned Judicial Magistrate, First Class, Jalgaon, dated 01.08.2007 in Regular Criminal Case No.638 of 2004 (RCC) and confirmed by learned Addl. Sessions Judge, Jalgaon, vide judgment and order dated 05.02.2016 passed in Criminal Appeal No.70 of 2007.

2. The applicant has been convicted for the offence punishable under Section 379 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.300/-. In default of payment of fine, he was directed to suffer further rigorous imprisonment for fifteen days.

3. Heard learned counsel for the parties.

4. Learned APP would submit that both the Courts below have held the applicant guilty for the offence on the basis of the evidence adduced in the case. This Court, therefore, cannot interfere therewith in exercise of revisional jurisdiction. Learned APP took me through the impugned judgment and ultimately, urged for rejection of the application.

5. The prosecution had examined four witnesses to establish the charge. The First Information Report (F.I.R.) was lodged on 10.09.2004 by a bicycle owner himself. The F.I.R. was lodged one month after the bicycle was stolen. From the

evidence of the bicycle owner, PW 4 – Prakash, it transpires that on the given day, he had been to market on his bicycle for purchase of books. He had parked the bicycle at an open space near the scrap bazar and went to the shop. On return, he did not find the bicycle there.

6. The evidence of PW 4 – Prakash does not connect the applicant with the offence of theft of bicycle. It appears that the applicant was arrested on 10.09.2004 itself, might be in connection with some other offence. It cannot be said to be a coincidence that PW 4 – Prakash lodged the FIR on the day when the applicant was arrested. It appears that the bicycle is shown to have been recovered at the instance of the disclosure statement made by the applicant on 11.09.2004. Pursuant to the disclosure statement, the bicycle came to be seized from the residence of one Pradip Shimpi. He has not been examined. On seizure of the bicycle, it was not subjected to test identification. There is nothing to indicate that the seized bicycle borne any year-mark to attribute its ownership to the informant (PW 4 – Prakash). Although the seizure panchnama

had been proved by the evidence of both the panch witnesses, it is reiterated that on the basis of the sole evidence of a disclosure statement made by the applicant/accused, no conviction can be sustained. He had not stated in his disclosure statement to have had kept the bicycle or given it to said Pradip Shimpi, from whose residence the same came to be recovered. Three inferences are possibly raised on the basis of the disclosure statement made under Section 27 of the Evidence Act. Those are: (i) the accused had knowledge that a particular thing was at a particular place; (ii) It is he, who has placed the said thing at that place; and (iii) Someone has informed him the said thing to have been at that particular place.

7. Since the disclosure statement made by the applicant does not indicate him to have had kept the bicycle at a place from which it was recovered and it did not bear any year-mark to attribute its ownership to the informant, it cannot be said that it was subject of theft and same was recovered from the possession of the applicant. On the basis of such

kind of evidence, the trial Court ought not to have convicted the applicant.

8. It is true that in exercise of revisional jurisdiction, the Court is only expected to see correctness, propriety and legality of the order under challenge. On examination of judgment of the appellate Court, it is noticed that the applicant had not been represented by an Advocate. The appellate Court itself perused the impugned judgment of the trial Court, appreciated the evidence in the case and confirmed the judgment of conviction. The same indicates that applicant did not have an opportunity to represent him in the case. If the applicant was not appearing before the appellate Court, the appellate Court could have appointed an Advocate for its assistance in the matter. On this sole ground, the impugned judgment is liable to be set aside. It would not serve the purpose by remanding the matter to the appellate Court for deciding it afresh since, on appreciating the evidence in the case, I find that the trial Court's judgment is liable to be set aside.

9. In the result, the Revision Application succeeds.

Hence, the following order:-

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned judgment of conviction and order of sentence dated 01.08.2007 passed by learned Judicial Magistrate, First Class, Jalgaon, in Regular Criminal Case No.638 of 2004 (RCC) and confirmed by learned Addl. Sessions Judge, Jalgaon, vide order judgment and order dated 05.02.2016 in Criminal Appeal No.70 of 2007, is set aside;
- (iii) The applicant is acquitted of the offence punishable under Section 379 of Indian Penal Code;
- (iv) Fine amount, if any, paid by the applicant be refunded to him;
- (v) In view of the above, Criminal Application No.611 of 2021 stands disposed of.

[R.G. AVACHAT, J.]