



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

**CRIMINAL REVISION APPLICATION NO. 265 OF 2016
WITH CRIMINAL APPLICATION NO. 6729 OF 2016**

**ZAMIR KHAN S/O BUDDAN KHAN AND ANR
VERSUS
THE STATE OF MAHARASHTRA**

Mr. K. D. Jadhav a/w Mr. V. L. Bhange, Advocate for the applicants
Ms. V. S. Choudhari, APP for the respondent/State

**CORAM : S. G. MEHARE, J.
DATE : 18th SEPTEMBER, 2024**

PER COURT :-

1. Heard the learned counsel for the applicants and the learned APP for the respondent/State.
2. The applicant/accused has preferred the revision against the judgment and order of learned Judicial Magistrate First Class, Sonpeth passed in R.C.S. No. 304/2008 (old R.C.S. No. 232/2004) dated 18/01/2024 and the judgment and order of learned Additional Sessions Judge, Gangakhed in Criminal Appeal No. 6/2014 dated 28/11/2016.
3. The learned trial Court held the applicant guilty of the offences punishable under Sections 379 of the Indian Penal Code (for short 'IPC') and Section 42 of the Indian Forest Act. However, the learned Appellate Court acquitted the applicant of the offence punishable under Section 42 of the Indian Forest Act and

confirmed the conviction under Section 379 of IPC.

4. The learned counsel for the applicant argued that unless the title of the complainant is proved, it can't be said that it was stolen property. The witnesses are contradictory to the fact of the ownership of the sandalwood. No mandatory procedure was followed. License or permission was not obtained from the forest department to plant the sandalwood. His argument revolves around the failure to prove the title of the stolen property. He has referred to the findings of both courts and prayed that the offence against the applicant has not been proved. Since the title is not proved the applicant can't be held guilty for the offence punishable under Section 379 of IPC. He prayed to allow the revision and acquit the applicant of the offence punishable under Section 379 of IPC.

5. Learned APP for the State vehemently argued that the clinching evidence was produced before the Court that the applicants were caught hold in the field from where they had stolen the sandalwood. She also argued that immediately after theft, the applicants were apprehended in the field itself by the employee of the landowner. The police were called, and the seizure panchnama was drawn. The 7/12 extract in the name of the complainant was placed on record to prove the title. That apart, the burden was on the applicant to prove that they had an

account of their possession. She further argued that there is no apparent error on the face of the record holding that applicants guilty for the offence punishable under Section 379 of IPC. There is no substance in the petition. Hence, the petition may be dismissed.

6. Perused both impugned judgment and orders. The learned trial Court has considered the facts and conduct of the applicant. The recovery of the pieces of the sandalwood from the custody of the applicant in the field itself where they were apprehended. Panchnama was also drawn in the field.

7. Section 114 of the Indian Evidence Act provides for the presumption of the existence of the certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (i) is very specific that provides that a man, who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession.

8. Both Courts have considered the post-event conduct of the applicant and the recovery of the pieces of the sandalwood. All

these facts were established and proved. However, the applicants could not account for their possession. The Courts have given regard to the common course of natural events and human conduct in relation facts of the case. Both Courts have not committed an error of law in holding the applicants guilty of the offence punishable under Section 379 of IPC.

9. Soon after the Court dictated the above order, the learned counsel for the applicant prayed for the benefit of the Probation of Offenders Act. He relied upon the judgment in case of ***Gulazar Vs. State of M.P., 2008 AIR (SC) 383***. However, in this case, the Court expressed specifically that it has not expressed any opinion in regard to the benefit to the applicant either under the Probation of Offenders Act or 360 of the Code of Criminal Procedure. The case of ***Lakhvir Singh Etc. Vs. State of Punjab and Another, 2021 DGLS (SC) 24 2021 (1) JT 488*** was based upon the different facts. However, Punjab and Haryana High Court in case of ***Surjit Singh and Anr. Vs. State of Punjab, 2009 DGLS (P&H) 607*** has considered the extension of benefit under Section 4 of the Probation Offenders Act. The Hon'ble Supreme Court, in the case of ***Som Dutt and Ors Vs. The State of Himachal Pradesh, 2022 Surpeme (SC) 271 (Criminal Appeal No. 549 of 2022 (Arising out of SLP (Cri.) No. 7831/2021 decided on 04/04/2022*** has held that having regard to the sentence imposed by the

courts below on the appellants for the offence under Section 379 read with Section 34 of IPC, and having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct.

10. In the case at hand, there is no material before the Court that there were antecedents to the discredit of the applicants, and subsequently, they were convicted or tried for any other crime. In the facts and the circumstances of the case, it is expedient to release the applicants on probation of good conduct.

ORDER

- (i) The revision stands dismissed.
- (ii) Both the impugned orders and judgments of the trial Court, as well as the Appellate Court are maintained. However, instead of sentencing them at once to the punishment the applicants be released on entering into a bond for Rs.5,000/- each with one solvent surety each to appear and receive sentence when called upon during the period for one year from the date of execution of the bond and in the meantime they should keep the peace and be of good behaviour.
- (iii) R and P be returned to the learned trial Court.
- (iv) Pending application, if any, stands disposed of.

(S. G. MEHARE, J.)