

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.712 of 2019**

Arising Out of PS. Case No.-33 Year-2017 Thana- BHAGALPUR GRP CASE District-
Bhagalpur

=====

Md. Sonu @ Md. Saheban Ali @ Saheban Son of Shanshah Ali @ Shanshah
Resident of Village-Mustafapur, Police Station-Barari, District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Smt. Neelam Kumari, Advocate Mr. Arjun Prasad No.1, Advocate
For the State	:	Mr. Mithlesh Kumar Khare, APP

=====

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 09-01-2025

The present Criminal Revision petition has been preferred by the petitioner against the impugned judgment dated 19.02.20219 passed by learned 4th Additional Sessions Judge, Bhagalpur in Cr. Appeal No. 96 of 2018, whereby learned Sessions Court has upheld the judgment of conviction dated 30.08.2018 passed by learned A.C.J.M, Railway, Bhagalpur, whereby the petitioner was found guilty under Sections 379 and 411 of the Indian Penal Code. However, learned Trial Court has not sentenced the petitioner under Section 411 of the Indian Penal Code and under Section 379 of the Indian Penal Code the petitioner was sentenced to rigorous imprisonment for 1 and ½ years. However, learned Appellate Court has modified the



sentence by sentencing the petitioner to rigorous imprisonment for 9 months but to pay fine of Rs.10,000/-.

2. As per the prosecution case, the petitioner has stolen mobile from the pocket of the informant while standing in the queue and when hulla was raised by the informant, the petitioner/accused was apprehended and mobile was recovered and seized from the petitioner/accused.

3. On the written report, Rail Bhagalpur P.S. Case No. 33 of 2017 was registered on 21.02.2017 for offence punishable under Sections 379 and 411 of the Indian Penal Code. Subsequently, after investigation charge-sheet was submitted and cognizance of the offence was taken and charge under Sections 379 and 411 of the Indian Penal Code was framed against the petitioner.

4. During trial, the following witnesses were examined on behalf of the prosecution:-

(i) P.W.-1 is Virendra Kumar Chaudhary (Informant)

(ii) P.W.-2 is Krishna Paswan

(iii) P.W.-3 is Jitendra Kumar Kashyap (I.O.)

5. During trial, the following documentary evidences were adduced on behalf of the prosecution:-

(i) Ext.-1 is Written petition



(ii) Ext.-2 is Seizure List

(iii) Ext.-3 is Arrest Memo

(iv) Ext.-4 is Endorsement upon written petitioner

(v) Ext.-5 is Formal F.I.R.

6. During trial all three witnesses have deposed in support of the prosecution case. It also transpires that during investigation, the seized mobile was released to the informant, but during trial the seized mobile was not produced in the Court nor identified by the informant. Only seizure list was exhibited as Ext.-2 but neither panchnama of any mobile nor the mobile itself was produced in the Court during trial.

7. I have heard learned counsel for the petitioner and learned APP for the State.

8. Learned counsel for the petitioner submits that petitioner is innocent and has falsely been implicated. He further submits that as per the evidence on record, the prosecution has failed to prove the very basis of the allegation of theft i.e. alleged stolen mobile, which has not been produced in the Court during trial. As such, there is no substantive evidence on record to prove what was stolen. Hence, non-production of mobile during the trial and non-identification of the same by the informant is fatal to the prosecution case. The prosecution has



failed to prove the case against the petitioner beyond all reasonable doubts.

9. He further submits that the learned Appellate Court has further committed error of law by imposing fine upon the petitioner because this appeal was filed by the petitioner, not by the State and hence, there is no question of imposing any additional sentence of fine.

10. However, learned APP for the State defends the impugned judgment submitting that there is no illegality or infirmity in the impugned judgment and order of sentence.

11. I considered the submission advanced by both the parties and perused the material on record.

12. I find that the very basis of allegation of theft i.e. the mobile has not been produced in the Court, let alone any identification of the same by the informant. Hence, for want of any substantive evidence of the stolen property, the prosecution fails to prove the case against the petitioner beyond all reasonable doubts.

13. I further find that the appeal was filed in the appellate Court by the petitioner. Hence, there is no question of additional sentence by way of fine by the appellate Court upon the petitioner. Hence, I find that the impugned judgment and



order of sentence dated 30.08.2018 passed by learned 4th Additional Sessions Judge, Bhagalpur in Cr. Appeal No. 96 of 2018 is not sustainable in the eye of law and the same is set aside.

14. The petitioner is acquitted of the charges for want of any substantive evidence beyond all reasonable doubts against him. Accordingly, the petition is allowed.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.01.2025.
Transmission Date	15.01.2025.

