



2026:DHC:1323



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 18.12.2025

Judgment pronounced on : 16.02.2026

+ **CRL.REV.P. 285/2014**

DHARMENDER SINGH

.....Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Attin Shankar Rastogi, Mr. Archit Chauhan & Ms. Asmi Verma, Advs.

For the Respondent : Mr. Raj Kumar, APP for the State
SI Ashok, PS- Anand Vihar

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed against the judgment dated 22.03.2014 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('**ASJ**'), Karkardooma Courts, Delhi in Criminal Appeal No. 52/2014.

2. By the impugned judgment, the learned ASJ upheld the judgment dated 21.12.2012 and order on sentence dated 22.12.2012 passed by the learned Magistrate whereby the petitioner was convicted



for the offence under Section 411 of the Indian Penal Code, 1860 ('IPC') and was sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of ₹2,000/- and in default of payment of fine to undergo simple imprisonment for a period of 2 months.

3. Briefly stated, on 01.04.2004, FIR No. 126/2004 was registered at Police Station Anand Vihar on a complaint given by one Kusum Verma for the offence punishable under Section 380 of the IPC regarding theft of Nokia 8310 mobile phone belonging to the then Presiding Officer, MACT Court, Karkardooma Court from the Chamber attached with Court No. 4. During the course of investigation, the details of the SIM used in the said mobile phone was obtained and the IMEI number of the stolen mobile phone was also found.

4. Thereafter, the phone was kept under surveillance and on 07.05.2004, the report was received from Airtel Company that the said mobile phone was used on a different mobile number from 02.04.2004 – 07.04.2004 and the user of the said mobile phone was found to be Mahendra Singh and Surinder Pal Singh. On enquiry, the said Surinder Pal Singh stated that the above mobile phone was given to him by the petitioner on 01.04.2004 for checking the phone which was returned to the petitioner after using for 3-4 days. The petitioner was thereafter arrested on 15.05.2004 and the mobile phone was also recovered from his possession. Consequently, FIR No. 126/2004 was



registered against the petitioner for the offences under Sections 380/411 of the IPC.

5. By the impugned judgment, the learned ASJ upheld the judgment on conviction dated 21.12.2012 and order on sentence dated 22.12.2012 passed by the learned Magistrate whereby the petitioner was convicted for the offence under Section 411 of the IPC and was sentenced to undergo rigorous imprisonment for a period of 1 year and to pay a fine of ₹2,000/- and in default of payment of fine to undergo simple imprisonment for a period of 2 months. The learned ASJ noted that the petitioner only refuted the allegations levelled against him in his statement under Section 313 of the CrPC and stated that nothing was recovered from him. It was noted that the mobile phone was recovered from the possession of the petitioner.

6. The learned ASJ noted that while the petitioner had taken the plea that he had purchased the said mobile phone from one Sunil Kumar for a sum of ₹1,000/-, the same could not be substantiated. It was further noted that the said plea was not taken by the petitioner in his statement under Section 313 of the CrPC. It was noted that the Call Records reflected that another sim card was used in the said mobile phone from 02.04.2004 to 06.04.2004. It was further noted that sim card belonged to the father of PW5 and as per the testimony of PW5, the said phone was given to them by the petitioner for checking the condition of the battery and that as soon as PW5 and his father learnt that the phone was a stolen article, the same was returned to the



petitioner. It was noted that the stolen mobile phone was thereafter recovered from the possession of the petitioner on 15.05.2004. The learned ASJ noted that there existed nothing on record to doubt the factum of the recovery of the stolen mobile phone. It was consequently noted that the onus was on the petitioner to explain as to how and in what circumstances the mobile phone was found in the possession of the petitioner. It was noted that while at some stage the petitioner had taken a defence that the said mobile phone was purchased by him from one Sunil Kumar for ₹1,000/- and that the said stance was not taken by the petitioner in his statement under Section 313 of the CrPC, even if were to be assumed that the said stance was correct, yet considering the paltry sum that was claimed to have been paid as consideration by itself showed that the said phone, if at all, was not purchased *bona fide*. Consequently, considering the aforesaid, the learned ASJ upheld the conviction and sentence of the petitioner.

7. Aggrieved by the same, the petitioner has filed the present petition.

8. By order dated 17.09.2025, this Court requested Mr. Attin Shankar Rastogi, Advocate who was present in Court to address arguments on behalf of the petitioner. He submitted that the petitioner's conviction is based on conjectures and surmises. He submitted that once the petitioner was acquitted of the offence under Section 380 of the IPC, he could not have been convicted for the



offence under Section 411 of the IPC. He relied upon the decision of the Hon'ble Apex Court in the case of ***Sd. Shabuddin v. State of Telangana* : 2025 SCC OnLine SC 1734** to contend that once the learned Trial Court reached a conclusion that there was no commission of theft on the part of the petitioner, there arose no question of the petitioner committing an offence of dishonestly receiving a stolen property under Section 411 of the IPC. He further submitted that the prosecution failed to show that the petitioner dishonestly received or retained the stolen property knowing that the same was stolen.

9. Without conceding on the merits of the case, the learned counsel for the petitioner further submitted that the petitioner's sentence may be reduced to the period already undergone by him. He submitted that the petitioner has no other antecedents and submitted that considering that more than two decades have passed since the incident, the petitioner would be severely prejudiced if he is subjected to suffer the remaining period of his sentence.

10. *Per contra*, the learned Additional Public Prosecutor for the State submitted that there exists no infirmity in the petitioner's conviction in the present case. He further submitted that the learned Trial Court as well as the learned Appellate Court have rightly appreciated the material on record, however, he conceded that the State had no objection if this Court were to take a lenient view in regard to the sentence of the petitioner.



ANALYSIS

11. It is pertinent to note that since the petitioner has preferred a revision petition before this Court thereby challenging the concurrent findings of the learned ASJ and learned Magistrate, the role of this Court is limited to assessing the correctness, legality and propriety of the impugned judgment. It is well settled that this Court ought to exercise restraint, and should not interfere with the findings of the impugned orders or reappreciate evidence solely because another view is possible unless the impugned orders are wholly unreasonable or untenable in law. The Hon'ble Apex Court in the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri : (1999) 2 SCC 452*** discussed the scope of revisional jurisdiction and held as under:

“5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice....”

(emphasis supplied)

12. In the case of ***Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460***, the Hon'ble Apex Court had also expounded upon the scope of



interference in exercise of revisional jurisdiction. The relevant portion of the judgment is as under:

*“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. **The object of this provision is to set right a patent defect or an error of jurisdiction or law.** There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. **If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative.** Each case would have to be determined on its own merits.*

*13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. **The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie...***

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18. ...Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

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*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. **The jurisdiction could be exercised where there is palpable error, non-***



compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily...”

(emphasis supplied)

13. In the present case, the conviction of the petitioner under Section 411 of the IPC was sustained considering that the stolen mobile phone was recovered from the possession of the petitioner and considering that the petitioner failed to account for the possession of the said mobile phone or produce any document/witness pertaining to its ownership in the petitioner's name.

14. The learned counsel representing the petitioner emphasised that once the petitioner was acquitted of the offence of theft, he could not have been convicted for the offence under Section 411 of the IPC. In doing so, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court in the case of ***Sd. Shabuddin v. State of Telangana*** (*supra*). The said case, in the opinion of this Court, does not aid the case of the petitioner.

15. In the case of ***Sd. Shabuddin v. State of Telangana*** (*supra*), the allegation against one accused person called Moulana was that he murdered the deceased out of jealousy by slitting his throat and thereafter concealed the deceased's body, stole his belongings including cash of ₹2,92,629/-, bike and phone and thereafter fled the scene. Further, it was alleged that on the following day, accused Moulana, with the help of another accused person who had agreed to help him for a consideration of ₹30,000/-, threw the body of the



deceased on the burning pyre to obliterate the evidence. Thereafter, on the following day, accused Moulana partially deposited a sum of ₹2,40,000/- in the bank and retained the remaining amount. Accused Moulana was thereafter charged with the offences under Sections 302, 201 and 379 of the IPC and the other accused was charged with offences under Sections 379 and 201 of the IPC. The Trial Court thereafter acquitted both the accused persons of the charges under Sections 379/302/201 of the IPC but convicted them for the offence under Section 411 of the IPC considering that the accused persons were found in possession of cash and because they were not able to account for the possession of such a huge amount of cash. The said conviction was upheld by the High Court while noting that a mere claim by the accused persons that the cash belongs to them is insufficient to prove that the cash belonged to the accused persons.

While setting aside the conviction of the accused person, the Hon'ble Apex Court noted that the conviction under Section 411 of the IPC solely on the ground that the accused persons were unable to account for the huge amount of cash is untenable. In that, the Hon'ble Apex Court further noted as under:

*“15.3. Thus, to establish culpability under Section 411 IPC, it must be proved that the accused had dishonestly received or retained the stolen property and in doing so, he either had knowledge or reason to believe that the same is a stolen property. **The natural corollary being if the courts upon trial reach a conclusion that the property in question is not a stolen property, therefore, the accused cannot be charged for the offence punishable under Section 411 IPC especially when the whole case of the prosecution relates to the events forming part of the same transaction.**”*



15.4. Since the very beginning, the case of the prosecution is that accused-Moulana committed the homicide of the deceased, stole his belongings, including the sum of Rs. 2,92,629/-, while the deceased was on a business trip to the distant town of Warangal. The accused-Moulana had also paid Rs. 30,000/- out of the total money that he had stolen from the deceased to the present appellant. During the trial, the Trial Court has outrightly rejected this theory of theft, against which no appeal till date has been preferred by the prosecution or the complainant before the High Court.

15.5. Therefore, once the Trial Court has acquitted both accused-Moulana and the present appellant under Section 379 IPC, we fail to understand how the Trial Court reached a conclusion that the accused persons are liable under Section 411 IPC. **In order to uphold conviction under Section 411 IPC, it is sine qua non that the property in the possession of accused is a stolen property. If the property is not a stolen property, the charge under Section 411 IPC cannot be sustained.**"

(emphasis supplied)

16. Unlike the case as quoted *supra* which pertained to recovery of allegedly unaccounted cash from the accused persons, the present case relates to the theft of a mobile phone. The contents of the complaint of the stolen mobile phone were proven by the complainant (PW3). Further, PW-2 identified the stolen mobile phone and specifically deposed that he was the owner of the said phone. Despite opportunity being given, no question was put to PW2 by the learned counsel representing the petitioner.

17. As per the testimony of the PW5, the petitioner had given the said mobile phone to him soon after the date of the incident to check the battery condition of the phone. PW5 further deposed that the said phone was used by his father for some time and was thereafter



returned to the petitioner. No question was put to the said witness as well by the learned counsel representing the petitioner. The seizure memo indicates that the mobile phone was thereafter recovered from the possession of the petitioner on 15.05.2004. Evidently, the aspect that the mobile phone was a stolen property and that the same was recovered from the possession of the petitioner stood established. Consequently, the observations made by the Hon'ble Apex Court in *Sd. Shabuddin v. State of Telangana (supra)*, in the opinion of this Court, is not applicable to the facts of the present case considering that the property found to be in possession of the petitioner was a stolen one.

18. The learned counsel for the petitioner has further emphasised that the prosecution failed to show that the petitioner dishonestly received or retained the stolen property knowing that the same was stolen one.

19. In the present case, as noted above, the recovery of the stolen mobile phone from the possession of the petitioner stood established. In that regard, it is pertinent to note that Section 114 of the Indian Evidence Act, 1872 lays down that the Court may presume the existence of certain facts. Illustration (a) to Section 114 of the Indian Evidence Act, 1872 lays as under:

“The Court may presume —



(a) 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..."

20. As rightly noted by the learned ASJ, the petitioner failed to explain as to under what capacity and in what circumstances the petitioner was in possession of the said mobile phone. Further, as rightly noted by the learned ASJ, while at some stage, the petitioner claimed that the said phone was purchased by him (though the said stance was not taken in the petitioner's statement under Section 313 of the CrPC), no evidence was led to show that the petitioner was in *bona fide* possession of the stolen mobile phone. Further, even in his statement under Section 313 of the CrPC, the petitioner merely refuted the allegations raised against him. Considering that the mobile phone was stolen and the same was also found in possession of the petitioner, amongst the other attendant circumstances, a presumption is raised against the petitioner in terms of Section 114 of the Indian Evidence Act, 1872 which the petitioner has failed to rebut. In the absence of any material to indicate to the contrary, mere denial of allegations does not tantamount to rebuttal of the presumption raised against the petitioner.

21. As noted above, at the stage of revision, this Court is not required to reappreciate evidence and it can interfere only in face of palpable and glaring perversity. As discussed above, the Courts below have aptly appreciated the material on record and the petitioner's conviction is backed by rational reasoning. This Court is thus of the



opinion that the petitioner has failed to make out any case which warrants interference with the impugned judgment.

22. Insofar as the sentence of the petitioner is concerned, pertinently the incident took place way back on 01.04.2004 and more than two decades have elapsed since then. It is also relevant to note that by order dated 19.08.2014, this Court suspended the sentence of the petitioner noting that out of the total sentence of one year, the petitioner had already suffered incarceration for more than 5 months 4 days besides remission earned for 20 days. Evidently, the petitioner has suffered a significant portion of his sentence in custody.

23. Considering the same, this Court is of the opinion that no purpose would be served by relegating the petitioner to undergo the remaining period of carceral punishment after more than twenty years have passed since the incident. Interests of justice would be met if the sentence imposed upon the petitioner is reduced to the period already undergone by him.

24. In view of the above, without interfering with the conviction of the petitioner, his sentence is reduced to the imprisonment already suffered by him and payment of fine of ₹2,000/-. Fine amount, if not already paid, is directed to be paid within a period of eight weeks from date.

25. This Court appreciates the efforts put in by Mr. Attin Shankar Rastogi, Advocate in assisting the Court.



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26. The Delhi High Court Legal services Committee is directed to pay the fees of the learned counsel as per its scheduled rates and rules.
27. The present petition is disposed of in the aforesaid terms.
28. The bail bond and surety furnished by the petitioner stands discharged.

AMIT MAHAJAN, J

FEBRUARY 16, 2026
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