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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 208 of 2015
Reserved on: 27.10.2026
Date of Decision: 31.11.2026.

Guman Singh ...Petitioner

Versus

State of H.P. ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] *No.*

For the Petitioner(s) : Mr S.C. Sharma, Senior Advocate, with Mr Ravi Patial, Advocate.

For the Respondent : Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 04.04.2015, passed by the learned Additional Sessions Judge-II, Shimla (learned Appellate Court), vide which the judgment of conviction dated 20.11.2013 and order of sentence dated 18.12.2013, passed by learned Judicial Magistrate First Class, Chopal, District Shimla (learned Trial Court), were upheld. (*Parties*

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)

2. Briefly stated, the facts giving rise to the present revision are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 379 and 120-B read with Section 34 of the Indian Penal Code (IPC). It was asserted that the informant, Geeta Ram (PW-3), was a driver and Yashwant Singh (PW-9) was the owner of the tipper bearing registration No. HP-08A-1900. Yashwant Singh had taken a contract for paving the road. The tipper was being used for transporting the material. The informant parked the tipper on Dofti Road on 02.12.2007 at about 6:00 PM and went to his home. He returned to the place where the tipper was parked on 03.12.2007 and found that the tipper was missing. The informant searched for the tipper, but could not trace it. He informed the owner. The informant and Sohan Singh (PW-1) searched for the tipper at various places, but it could not be traced. The matter was reported to the police, and FIR (Ext.PW-1/A) was registered.

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3. ASI Sapinder Singh (PW-10) investigated the matter. He visited the spot and prepared the site plan (Ext. PW-10/A). HHC Rati Ram (PW-4) took photographs of the spot (Ext. PW-4/A-1 to Ext. PW-4/A-11), whose negatives are Ext. PW-4/B-1 to Ext. PW-4/B-11. ASI Sapinder Singh obtained the certificate (Ext. PW-10/B) regarding the engine and chassis number of the tipper. The call detail records of the accused were obtained. The accused, Guman Singh, made a disclosure statement (Ext. PW-1/C) and led the police to Panchkula-Ambala Road near Nada Sahib, where the tipper was found parked. The memo (Ext. PW-1/D) was prepared. Yashwant Singh identified the tipper. The spot map (Ext. PW-10/C) was prepared.

4. Accused Guman Singh escaped from custody near Parwanoo, and he was again arrested. Accused Rajesh Kumar made a disclosure statement (Ext.PW-1/E). He led the police to Dofti Jungle, where the broken registration plates of the tipper bearing registration No. HP-08A-1900 were recovered. These were seized vide memo (Ext. PW-1/F). These were identified by Geeta Ram, who put his signature as an identifier. A site plan (Ext. PW-10/D) was prepared. Accused Guman Singh was arrested, and his mobile phone xxx004 was seized vide memo (Ext. PW-5/A).

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The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Trial Court.

5. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, they were charged with the commission of offences punishable under Sections 379 and 120-B read with Section 34 of the IPC, to which they pleaded not guilty and claimed to be tried.

6. The prosecution examined 12 witnesses to prove its case. Sohan Singh (PW-1) is a Munshi with Yashwant Singh, the owner of the tipper. Sandeep (PW-2) was present during the investigation. Geeta Ram (PW-3) is the informant and the driver of the tipper. HHC Ratti Ram (PW-4) is the witness to the recovery. Mast Ram (PW-5), Mohd. Deen (PW-6), Surinder Singh (PW-7) and Pawan Kumar (PW-8) did not support the prosecution's version. Yashwant Singh (PW-9) is the owner of the vehicle. ASI Sapinder Singh (PW-10) investigated the matter. K.D. Khan (PW-11) signed the FIR. Anurag Goswami (PW-12) produced the call detail records.

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7. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), stated that they came to know about the registration of the FIR when the police visited their house. They denied that they had made any disclosure statement leading to the recovery of the tipper or the registration plates. They admitted that they were arrested. They claimed that they were innocent and were falsely implicated. They did not produce any evidence in their defence.

8. Learned Trial Court held that it was duly proved by the statements of informant Geeta Ram, Munshi Sohan Singh, and owner Yashwant Singh that the tipper was missing. The accused Guman Singh had made a call to the owner Yashwant Singh and Munshi Sohan Singh from the mobile phone recovered from him and induced them to park the tipper unattended on the road. Accused Guman Singh made a disclosure statement leading to the recovery of the tipper. He escaped from custody, which was an incriminating circumstance against him. Accused Rajesh Kumar made a disclosure statement leading to the recovery of the registration plates; however, the possibility of the police knowing about the place could not be ruled out, and he was entitled to the benefit of doubt. Hence, the learned Trial Court convicted the

accused Guman Singh of the commission of an offence punishable under Section 379 of the IPC and sentenced him to undergo rigorous imprisonment for three years, pay a fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for one month.

9. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused preferred an appeal, which was decided by the learned Additional Sessions Judge, Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that accused Guman Singh had made a disclosure statement leading to the recovery of the stolen tipper. The accused had made calls to the owner stating that he intended to hire the tipper, and it should be parked in a lonely place. The tipper was found missing thereafter and was recovered pursuant to the disclosure statement made by the accused. The tipper was parked in an open place, but the place was not known to the police or any other person. The minor contradictions in the statements of the witnesses were not sufficient to doubt the prosecution's case. The mere fact that some of the prosecution witnesses had turned hostile was not sufficient to discard the prosecution's version. The sentence imposed by the

learned Trial Court was adequate, and no interference was required with the judgment and order passed by the learned Trial Court. Hence, the appeal was dismissed.

10. Being aggrieved by the judgment and order passed by the learned Courts below, the accused has filed the present revision asserting that the prosecution's version was inherently improbable. No thief would make a call to the owner before committing the theft. The mobile number was in the name of Vijay Shandil, who was not examined. The call detail record did not mention any call having been made to the mobile number xx114. No independent witness was associated while recording the statement of the accused under Section 27 of the Indian Evidence Act. The prosecution witnesses were closely related to each other. The colour of the tipper was changed, and no person was examined to prove that the colour was changed at the instance of the accused. Therefore, it was prayed that the present revision be allowed and the judgment and order passed by the learned courts below be set aside.

11. I have heard Mr S.C. Sharma, learned Senior Advocate, assisted by Mr Ravi Patial, learned counsel for the

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petitioner/accused, and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

12. Mr S.C. Sharma, learned Senior Counsel for the petitioner/accused, submitted that the accused is innocent and he was falsely implicated. The prosecution's version that the accused had called the owner and asked him to park the tipper at a lonely place is inherently suspect. The call detail record does not mention that any call was made to mobile number xxx114. No independent witness was present at the time of the recovery. The chain of circumstances was not proved beyond a reasonable doubt. The statements of witnesses contradicted each other on material aspects, and the learned Trial Court erred in holding that the contradictions were minor. Therefore, he prayed that the present revision be allowed and the judgments and order passed by the learned Courts below be set aside. He relied upon ***Jaswinder Singh alias Shinder Singh Vs. State of Punjab, 2026 STPL 22 SC, Jay Prakash Yadav Vs. State of Jharkhand, 2026 STPL 2670 SC*** and ***Narender Singh Vs. State of Madhya Pradesh, 2026 STPL 3640 SC*** in support of his submission.

13. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the learned Courts below have consistently held that the testimonies of owner Yashwant Singh (PW-9), Sohan Singh (PW-1), and Geeta Ram (PW-3) are credible. The failure to join independent witnesses while recording the statement of the accused under Section 27 of the Cr.P.C. is not fatal. There is no infirmity in the judgments and order passed by the learned Courts below. Hence, he prayed that the present revision be dismissed.

14. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

15. It was laid down by the Hon'ble Supreme Court in ***Kuntegowda v. Thurubaiah, 2026 SCC OnLine SC 1485,*** that a revisional court does not act as an appellate court and it can only determine the correctness, legality and propriety of the findings, sentence and order recorded by the lower court. It was observed:

> "**7.** Before parting, we would like to accentuate the revisional jurisdiction of the High Courts and the contours and inherent limits while exercising powers as a revisional authority. Section 397 of the Criminal Procedure Code, 1973 (now Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023) encapsulates the power of High Courts and Sessions Courts to examine the correctness, legality or propriety of

any order passed by an inferior criminal court. The said Section is extracted as hereunder:

> **"438. Calling for records to exercise powers of revision.—**(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.
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> *Explanation.* —All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.
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> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
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> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

Discretion in the exercise of revisional jurisdiction should be exercised within the four corners of this section whenever there has been miscarriage of justice. However, while exercising power under this section, the Court does not act as an appellate Court and therefore, while considering the legality, propriety or the correctness of a finding or a conclusion, the revisional court does not and should not dwell upon the facts and the evidence of the case as an appellate Court. The court, in revision, considers the

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material only to satisfy itself about the correctness, legality and propriety of the findings, sentence and order recorded by the lower court, and should refrain from substituting its conclusion on an elaborate consideration of evidence, and the findings of the lower courts should not be reversed merely on the ground that an alternative view is possible on the facts of the case. In this case, such a position did not also emanate from the evidence on record.

7.1. This Court, in ***State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, (2004) 7 SCC 659: 2004 SCC (Cri) 2003,*** observed that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral evidence and medical evidence and come to a conclusion contrary to the consistent one reached by two courts below. In the facts of the present case, in the impugned judgment, the High Court gravely erred in upsetting the concurrent findings of conviction of the trial court and the Appellate Court by substituting its own conclusions and reasoning on the merits of the case and thereby erred in setting aside the well-reasoned and correct judgment and orders of the trial and appellate courts.

7.2. Upon perusal of the impugned judgment and order dated 06.10.2023, it is apparent that the High Court went into great detail into each of the testimonies, documents and merits of the case, which could have been avoided, especially when the subject matter had come under its revisional jurisdiction. Instead, acting as an appellate Court, the High Court deemed it fit to go into the merits of the case, something which is generally impermissible unless a glaring contradiction is apparent on the face of the record. In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452: 1999 SCC (Cri) 275***, while considering the scope of the revisional jurisdiction of the High Court, this Court has laid down the following:

> "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

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other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting a 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 re-appreciate 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 a gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation in coming to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ..."

7.3. The contours for exercise of revisional jurisdiction have been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower court unless:

i. The order or finding of the lower court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering immaterial or irrelevant material or no material at all.

iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

7.4. This Court, in ***Sanjibij Tari v. Kishore S. Borcar, 2025 INSC 1158,*** in similar facts and circumstances wherein the High Court had reversed concurrent findings of conviction under Section 138 of the NI Act, while setting aside the impugned order, observed as under:

> "27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the Revisional Court to reanalyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services v. Sauermilch Design and Handels GMBH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.
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> 28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court."

7.5. In the facts of the present case, we find that the High Court has failed to highlight any reason or material satisfaction to the effect that there was any such glaring contradiction or perversity apparent on the face of the record so as to justify the exercise of the powers under revisional jurisdiction and thereby erred in interfering with the judgment and orders of the courts below. Therefore, the present appeal has to be allowed by setting aside the impugned order of the High Court. In view of the aforesaid discussion, we are of the view that the High Court committed an error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.

16. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

17. Yashwant Singh (PW-9) stated that he had engaged his tipper bearing registration No. HP-08A-1900 on the work being

executed on Dofti–Pawas Road. Guman Singh called on 1.12.2007 and said that his vehicle carrying iron rods would reach Dofti on 2.12.2007. Guman Singh asked Yashwant Singh to drop the iron bars and the cement at Pawas. Yashwant Singh quoted ₹600/- as the fare. The accused called again from his mobile No.xxx004 to mobile No.xxx152 and revealed that his vehicle had arrived, and Yashwant Singh should park the tipper at Dofti so that material could be loaded in the tipper. Yashwant Singh informed Sohan Singh to park the tipper and drop the material at Pawas. Geeta Ram informed on 3.12.2007 that the tipper was parked at Dofti, but it was missing. Hence, the matter was reported to the police. Yashwant Singh called Guman Singh, but Guman Singh disconnected the call. Subsequently, the tipper was recovered near Nada Sahib on Ambala–Panchkula Road at the instance of the accused Guman Singh. A memo (Ext. PW-1/D) of recovery was prepared.

18. He stated in his cross-examination that he had not called the driver to impart any instruction. The driver used to park the tipper at Chopal or Pawas. The driver had informed him on 3.12.2007, at about 11:30 AM, that the tipper could not be traced. Sohan Singh had also informed him on 3.12.2007, between 10:00

AM and 11:00 AM, that the tipper was not traceable. He denied that no such call was made, and that he was making a false statement.

19. Sohan Singh (PW-1) stated that his uncle Yashwant had taken a contract for paving Pawas–Dofti Road. The tipper bearing registration No. HP-08A-1900 was engaged in the paving work. Yashwant called him (Sohan Singh) and informed him that Guman Singh wanted to transport iron bars and cement from Dofti to Pawas. He wanted to use the tipper because the larger vehicle could not be driven on that road. Guman Singh also called him and said that the tipper should be parked at Dofti, where the material would be loaded into it. He received a call at about 5:30 PM from Guman Singh, who said that they were proceeding towards Chopal. He (Sohan Singh) informed Guman Singh that the tipper was parked at Dofti and the articles would be dropped at Pawas in the morning. When the driver went to drop the articles the next day, the tipper was missing. The driver informed him telephonically. He also went to the spot and tried to trace the tipper, but it could not be traced. He informed Yashwant Singh and reported the matter to the police. The police arrested Guman Singh, and Guman Singh made a disclosure statement that the tipper was parked. He led the police to the place where the tipper

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was parked. Yashwant Singh identified the tipper. He stated in his cross-examination that the tipper was parked at about 5.00 PM and it was not dark at that time. The distance between Dofti and Chopal was 16 kms. The driver informed about the missing vehicle at about 10.30 AM. He admitted that Euro-II vehicles could be started without the key. He had visited the Police Station twice. He admitted that the police station is located near Bazar. The tipper was originally red, but the colour was changed to light brown. The tipper was parked on the main road. He admitted that the accused had not taken the tipper in his presence and that he was making a false statement.

20. Geeta Ram (PW-3) stated that he used to drive the tipper bearing registration No. HP-08A-1900. Yashwant Singh had taken a contract for paving Pawas Road. The tipper was transporting the material. He parked the tipper at Dofti on 2.12.2007. He went to the spot on 3.12.2007 and found that the tipper was missing. He informed the owner and Sohan Singh. The tipper could not be traced, and the matter was reported to the police. Accused Guman Singh made a statement that the tipper was taken towards Ambala and that he could get it recovered. He led the police to the place from where the tipper was recovered.

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Accused Guman Singh took the police to Panchkula Road and got the tipper recovered. He stated in his cross-examination that it becomes dark at about 5-6 PM during December. He admitted that Euro-II vehicles cannot be opened without the key. He volunteered to say that if the lock is broken, the vehicle can be started. The distance between Dofti and Chopal was 25-30 kms. He had called Sohan Singh about the theft of the tipper. He used to maintain the log book of the vehicle, but he did not remember whether the police had inquired about the log book or not. He admitted that the tipper was parked on the roadside. He had brought the tipper from Ambala to Chopal. He denied that a false case was made against the accused and that they had not committed the theft.

21. The statements of these witnesses corroborated each other in material particulars. There is nothing in their cross-examination to show that they had any motive to depose against the accused. Yashwant Singh and Sohan Singh consistently stated that the accused Guman Singh had made a call to them asking them to park the tipper at Dofti. This is duly corroborated by the call detail records (Ext. PW-12/A) wherein the calls are shown to have been made from mobile No.xxx004 to mobile Nos. xxx152

(owned by Yashwant Singh) and xxx114 (owned by Sohan Singh) on 2.12.2007. Yashwant Singh had also made a call to mobile No. xxx004 on 3.12.2007. The accused had not explained these calls, and the learned courts below had rightly used these calls to corroborate the testimonies of Yashwant Singh and Sohan Singh.

22. It was submitted that the name and address of the subscriber was Vijay Shandil, and he was not examined to prove that mobile No.xxx004 was being operated by the accused. This submission will not help the accused. Mobile phone (Ext. P-2) was recovered from the accused at the time of his arrest. The learned Trial Court found that the IMEI number of the mobile phone and the IMEI number in the call detail records tallied with each other. Therefore, it was duly proved on record that accused Guman Singh was using the mobile No. xxx004, which he had used to call Sohan Singh and Yashwant.

23. It was submitted that the prosecution version is highly improbable, and no thief would call the owner before committing the theft. This submission will not help the accused. The statement of Yashwant shows that the tipper was being parked at Chopal or Pawas. The call was made so that it could be parked at

Dofti, in a lonely place. Thus, the intention of the caller was to get the tipper parked at a lonely place from where the theft could be easily committed, and there is nothing inherently improbable in making the call to the owner.

24. Accused Guman Singh made a disclosure statement leading to the recovery of the tipper. It was submitted that the memo (Ext. PW-1/C) is witnessed by Sohan Singh and Geeta Ram, and not by any independent person; therefore, the learned Courts below erred in relying upon the memo. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***State of Himachal Pradesh versus Jeet Singh, (1999) 4 SCC 370***, that there is no requirement to associate independent witnesses while recording the statement of the accused under Section 27 of the Indian Evidence Act. In ***State of U.P. v. Sunil, 2001 (1) SCC 652,*** the recovery was discarded by the High Court on the ground that no independent witness had signed the memo, and it was signed only by the highly interested person. It was held by the Hon'ble Supreme Court that there is no requirement under Section 27 of the Indian Evidence Act or Section 161 of Cr.P.C. to obtain the signatures of independent witnesses. The requirement of independent witnesses is when the recovery is effected under

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Section 100(4) of Cr.PC and not when the recovery is effected pursuant to the disclosure statement. It was further observed that statements of police officials cannot be doubted because they are official witnesses. It was observed: -

> "17. Recovery of the nicker is evidenced by the seizure memo Ext. PW-10/G. It was signed by PW10-Sharda, beside its author PW17-Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo, but it was signed only by "highly interested persons". The observation of the Division Bench in that regard is extracted below:
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> > "It need hardly be said that in order to lend assurance that the investigation has been proceeding in a fair and honest manner, it would be necessary for the Investigating Officer to take independent witnesses to the discovery under Section 27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt."
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> 18. In this context, we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure to obtain the signature of independent witnesses on the record in which the statement of an accused is written. The legal obligation to call Independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in

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the course of such search and of the places in which they are respectively found shall be prepared by such officer or another person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches, the team which conducts the search would have to meddle with lots of other articles and documents also and in such a process, many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But the recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the ***Transport Commissioner, Andhra Pradesh, Hyderabad & Anr. v. S. Sardar Ali & Ors.***1. Following observations of Chlnnappa Reddy, J. can be used to support the said legal proposition :

> "Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things, when the property is seized and not recovered during a search, it is not possible to comply with the provisions of subsections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure (under the Motor Vehicles Act), there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself."

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19. Hence, it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused, the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to the recovery of any article, it is open to the Investigating Officer to take the signature of any person present at that time on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

20. We feel that it is an archaic notion that the actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during the British period and policemen also knew about it. Its hangover persisted during post-independence years, but it is time now to start placing at least initial trust in the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence, when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused, it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a

> particular case. If the court has any good reason to suspect the truthfulness of such records of the police, the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions."

25. This question was also considered by the Hon'ble Supreme Court in ***Praveen Kumar Versus State of Karnataka (2003) 12 SCC 199*** in which a contention was raised that the statement recorded by the police under Section 27 of the Indian Evidence Act was not witnessed by any independent witness and the same should be rejected. It was held that there is no requirement to associate independent witnesses at the time of the disclosure statement. It was observed: -

> "20. The learned counsel for the appellant, however, contended that the alleged statement, Ext. P-35, was made to PW 33, not in the presence of any independent witness; hence, the same should be rejected. He also contended that the said statement was made on 2-3-1994, but the recovery was made only on 3-3-1994; therefore, the said recovery cannot be correlated to the statement, if any, made by the accused on 2-3-1994. He also challenged the fact of recovery, stating that the panch witnesses for the said recovery cannot be believed.
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> 21. Section 27 does not lay down that the statement made to a police officer should always be in the presence of independent witnesses. Normally, in cases where the evidence led by the prosecution as to a fact depends solely

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> on the police witnesses, the courts seek corroboration as a matter of caution and not as a matter of rule. Thus, it is only a rule of prudence that makes the court seek corroboration from an independent source, in such cases, while assessing the evidence of the police. But in cases where the court is satisfied that the evidence of the police can be independently relied upon, then in such cases, there is no prohibition in law that the same cannot be accepted without independent corroboration. In the instant case, nothing is brought on record to show why the evidence of PW 33/10 should be disbelieved in regard to the statement made by the accused as per Ext. P-35. Therefore, the argument that the statement of the appellant as per Ext. P-35 should be rejected because the same was not made in the presence of an independent witness has to be rejected."

26. The Full Bench of the Hon'ble Rajasthan High Court has also considered this question in ***State of Rajasthan vs. Mangal Singh AIR 2017 Raj. 68*** and gave the following reasons for not insisting upon the presence of independent witnesses during the disclosure statements:

> 22. We are of the firm opinion that the insistence on keeping attesting witnesses present when the Investigating Officer records the information supplied by the accused under Section 27 of the Evidence Act is absolutely unwarranted and rather amounts to a direct infringement of the confidentiality of the investigation. There are strong reasons behind this conclusion. We summarise a few illustrations in order to fortify the same:
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> > (a) Investigation commences the moment an F.I.R. is registered for a cognizable offence. An Investigating Officer, having custody of the accused, cannot predict

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in advance the precise moment when the accused would decide to reveal the information, which could lead to the discovery of an incriminating fact. Thus, if attestation of the information by an independent witness is insisted upon, as a direct corollary thereto, the Investigating Officer would be required to keep the witnesses in attendance right from the moment the accused is arrested till the information is elicited. This would lead to an absolutely absurd situation and is likely to frustrate the investigation. The very sanctity of investigation and the privilege available to the Investigating Officer to keep the investigation secluded from prying eyes would be compromised.

(b) Another possible situation may be that the accused might divulge the information under Section 27 of the Evidence Act to the Investigating Officer at a particular point of time when independent witnesses are not available. For adhering to the procedure of seeking attestation by independent witnesses, the Investigating Officer would then be required to summon independent witnesses and request the accused to repeat the information in their presence. At this point in time, the accused may either refuse to divulge the information given earlier or may oblige the Investigating Officer with the information, which would then be taken down in writing in the presence of the independent attesting witnesses. However, there is a fundamental glitch in adopting this procedure, which would certainly make the information, if any, received the second time around in the presence of the witnesses inadmissible in evidence. Law is well settled by a catena of decisions of the Hon'ble Supreme Court, including the judgment in the case of ***Aher Raja Khima v. The State of Saurashtra, reported in AIR 1956 SC 217,*** that information of a fact already known to the Investigating Officer is inadmissible in evidence. Thus, in case the Investigating Officer, while making

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an investigation from the accused in his custody, is provided information under Section 27 of the Evidence Act and soon thereafter, calls the Panchas and records the same in their presence, then he would be recording the memorandum of information already known to him. Such information would be inadmissible at the outset, and thus, the entire endeavour would become nothing short of an exercise in futility.

(c) There is yet another risk involved, which could severely prejudice the accused if the information provided by the accused under Section 27 is recorded in the presence of independent witnesses. The information under Section 27 of the Evidence Act often comprises two parts; one being confessional, which has to be excluded and the other, which leads to the discovery of an incriminating fact and is admissible in evidence to the extent of the discovery made in pursuance thereof. In case independent witnesses are kept present when the information is given by the accused, the prosecution may make an endeavour to prove even the confessional part of the information as being an extra-judicial confession made in the presence of independent witnesses. There may even arise a situation where the independent witness present to attest to the memorandum prepared under Section 27 of the Evidence Act is a Magistrate. In such a case, the confessional part of the information under Section 27 of the Evidence Act would almost assume the character of a confession under Section 26 of the Evidence Act, thereby condemning the accused to face severe consequences. There is a high probability of this situation arising in cases involving the recovery of narcotics where the Investigating Officer gives an option to the accused to be searched in the presence of a Magistrate or a Gazetted Officer. Contemplating that the option to be searched in the presence of a Magistrate is given and a

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> search of the accused is conducted, and during the process, he is also questioned in the presence of the Magistrate. At this time, the accused may provide information under Section 27 of the Evidence Act to the Investigating Officer, which is partly confessional in nature and is taken down in writing and got witnessed by the Magistrate by adhering to the requirement of attestation. In such a situation, the accused would be faced with severe consequences because the prosecution would then, by lifting the prohibition contained in Section 26 of the Evidence Act, insist on proving the whole of the information as amounting to a confession made in the presence of a Magistrate. Thus, the requirement seeking attestation of the memorandum prepared under Section 27 of the Evidence Act does not have any logic or rationale behind it."

27. Therefore, the disclosure statement cannot be discarded on the ground that independent witnesses were not associated.

28. It was submitted that the recovery was effected from an open place which was accessible to all, and the learned Courts below erred in relying upon such a recovery. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Limbaji v. State of Maharashtra*, *(2001) 10 SCC 340: 2001 SCC OnLine SC 1460***, that merely because the recovery was effected from an open place is not sufficient to discard the recovery, and the statement that the accused had hidden the articles could be

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relied upon to show the possession of the accused. It was observed:

> "IV(b). [14] We are left with the evidence of recovery of the ornaments of the deceased on the basis of the confessional statement of the accused under Section 27 of the Evidence Act if the discoveries are to be believed —which ought to be. The next two questions are whether the accused shall be deemed to be in possession of the articles concealed at various spots and whether such possession could be said to be recent possession. But for the decision of this Court in ***Trimbak v. State of M.P. [AIR 1954 SC 39: 1954 Cri LJ 335]*** the first question need not have engaged our attention at all. That was a case in which, at the instance of the accused, the stolen property was recovered at a field belonging to a third party and the accused gave no explanation about his knowledge of the place from which the ornaments were taken out. The High Court, while absolving the appellant of the charge of dacoity, convicted him under Section 411 IPC for receiving the stolen property by applying the presumption that he must have kept the ornaments at that place. On appeal by the accused, this Court took the view that there was no valid reason for convicting the appellant under Section 411 IPC. The Court pointed out that one of the ingredients of Section 411, namely, that the stolen property was in the possession of the accused, was not satisfied. The Court observed thus: (AIR p. 40, para 6)
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> > "6. When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there, and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession

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of these articles."

If this view is accepted, there is the danger of seasoned criminals, who choose to keep the stolen property away from their places of residence or premises, escaping from the clutches of presumption, whereas the less resourceful accused who choose to keep the stolen property within their house or premises would be subjected to the rigour of presumption. The purpose and efficacy of the presumption under Section 114(a) will be practically lost in such an event. We are, however, relieved of the need to invite the decision of a larger Bench on this issue in view of the confessional statement of the accused that they had hidden the articles at particular places and the accused acting further and leading the investigating officer and the panchas to the spots where they were concealed. The memoranda of Panchnama evidencing such statements are Exhibits 26, 28 and 30. If such a statement of the accused, insofar as the part played by him in concealing the articles at the specified spots, is admissible under Section 27 of the Evidence Act, there can be no doubt that the factum of possession of the articles by the accused stands established. We have the authority of the three-judge Bench decision of this Court in ***K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788: (1963) 1 Cri LJ 8]*** to hold that the statement relating to concealment is also admissible in evidence by virtue of Section 27. In that case, the question was formulated by Wanchoo, J., speaking for the Court, as follows: (AIR p. 1792, para 9)

> "9. Let us then turn to the question whether the statement of the appellant to the effect that 'he had hidden them (the ornaments)' and 'would point out the place' where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments."

After referring to the well-known case of ***Pulukuri Kottaya v. Emperor [AIR 1947 PC 67: 74 IA 65],*** the question was answered as follows: (AIR p. 1793, para 10)

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"10. If we may respectfully say so, this case clearly brings out what part of the statement is admissible under Section 27. It is only that part which distinctly relates to the discovery which is admissible, but if any part of the statement distinctly relates to the discovery it will be admissible wholly and the court cannot say that it will excise one part of the statement because it is of a confessional nature. Section 27 makes that part of the statement which is distinctly related to the discovery admissible as a whole, whether it be in the nature of confession or not. Now the statement in this case is said to be that the appellant stated that he would show the place where he had hidden the ornaments. The Sessions Judge had held that part of this statement which is to the effect 'where he had hidden them' is not admissible. It is clear that if that part of the statement is excised, the remaining statement (namely, that he would show the place) would be completely meaningless. The whole of this statement, in our opinion, relates distinctly to the discovery of ornaments and is admissible under Section 27 of the Indian Evidence Act. The words 'where he had hidden them' are not on a par with the words 'with which I stabbed the deceased' in the example given in the judgment of the Judicial Committee. These words (namely, where he had hidden them) have nothing to do with the history of the crime and are distinctly related to the actual discovery that took place by virtue of that statement. It is, however, urged that in a case where the offence consists of possession, even the words 'where he had hidden them' would be inadmissible as they would amount to an admission by the accused that he was in possession. There are, in our opinion, two answers to this argument. In the first place, Section 27 itself says that where the statement distinctly relates to the discovery, it will be admissible whether it amounts to a confession or not. In the second place, these words by themselves

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> *though they may show possession of the appellant, would not prove the offence, for after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the crime, i.e., in this case, the prosecution will have to show that they are stolen property. We are therefore of the opinion that the entire statement of the appellant (as well as of the other accused who stated that he had given the ornament to Bada Sab and would have it recovered from him) would be admissible in evidence and the Sessions Judge was wrong in ruling out part of it." *(emphasis supplied)

In the light of this decision, we must hold that the accused must be deemed to be in exclusive possession of the articles concealed under the earth though the spots at which they were concealed may be accessible to the public. It may be mentioned that in the ***Trimbak case [AIR 1954 SC 39: 1954 Cri LJ 335]*** this Court did not refer to the confessional statement, if any, made by the accused falling within the purview of Section 27 and the effect thereof on the aspect of possession.

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V(a). [16] In the light of the above discussion, in the instant case, the presumption under Section 114 Illustration (a) could be safely drawn and the circumstance of recovery of the incriminating articles within a reasonable time after the incident at the places shown by the accused unerringly points to the involvement of the accused. Be it noted that the appellants, who were in a position to explain how they could lay their hands on the stolen articles or how they had the knowledge of concealment of the stolen property, did nothing to explain; on the other hand, they denied knowledge of recoveries which, in the light of the evidence adduced by the prosecution, must be considered to be false. By omitting to explain, it must be inferred that either they intended to suppress the truth or invited the risk of a presumption being drawn. Thus, the presumption as to the commission of offence envisaged by Illustration (a) of

> Section 114 is the minimum that could be drawn, and that is what the trial court did.

29. Similarly, it was held in ***Perumal Raja v. State, 2024 SCC OnLine SC 12,*** that if the accused does not tell the Criminal Court that his knowledge of the concealment was on the basis of the possibilities that absolve him, an inference can be drawn that the accused had concealed those articles. It was observed:

> 32. In ***State of Maharashtra v. Suresh (2000) 1 SCC 471***, this Court in the facts therein held that recovery of a dead body, which was from the place pointed out by the accused, was a formidable incriminating circumstance. This would, the Court held, reveal that the dead body was concealed by the accused unless there is material evidence to show that somebody else had concealed it and this fact came to the knowledge of the accused either because he had seen that person concealing the dead body or was told by someone else that the dead body was concealed at the said location. Here, if the accused declines and does not tell the criminal court that his knowledge of the concealment was on the basis of the possibilities that absolve him, the court can presume that the dead body (or physical object, as the case may be) was concealed by the accused himself. This is because the person who can offer the explanation as to how he came to know of such concealment is the accused. If the accused chooses to refrain from telling the court as to how else he came to know of it, the presumption is that the concealment was by the accused himself.
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> 33. The aforesaid view has been followed subsequently and reiterated in ***Harivadan Babubhai Patel v. State of Gujarat(2013) 7 SCC 45, Vasanta Sampat Dupare v. State of Maharashtra (2015) 1 SCC 253, State of Maharashtra v. Damu S/o Gopinath Shinde (2000) 6 SCC 269,*** and ***Rumi Bora Dutta v. State of Assam (2013) 7 SCC 417.***"

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30. In the present case, the accused has not provided any explanation as to how he came to know about the fact that the tipper was parked near Nada Sahib on Ambala–Panchkula Road, and the only inference that can be drawn is that he had committed the theft. It was laid down in ***Rajjaua v. State*, *1958 SCC OnLine All 260: 1959 All LJ 403*** that where the accused was found in possession of the stolen property soon after the theft, he is to be presumed to be a thief or a receiver of the stolen property. It was observed at page 405:

> **11.** The basis of the Rule enacted in illustration (a) to Sec. 114 of the Indian Evidence Act appears to be the well-established principle of common law which has been stated in ***Halsbury's Laws of England, III Edition, Volume 10*** at page 813;
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> > "The possession by a person of property which has been recently stolen is some evidence in the absence of a reasonable explanation by him as to how it came into his possession, that he either stole it or received it knowing it to be stolen. Whether it is evidence of larceny or of receiving depends upon the circumstances of the case. The weight of the evidence depends upon the nature of the goods and the length of time which has elapsed from the time when they were stolen to the time when they are proved to have been in the possession of the accused."
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> **12.** Their Lordships of the Privy Council reiterated the same principle in ***Otto George Gfeller v. The King [45 (1944) Cr. L.J. 241.]*** when they observed:

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> "that upon the prosecution establishing that the accused was in possession of goods recently stolen, they may in the absence of any explanation by the accused of the way in which the goods came into his possession which might reasonably be true, find him guilty, but if an explanation were given which the jury think might reasonably be true, and which is consistent with innocence although they were not convicted of its truth the prisoner was entitled to be acquitted."

13. If, therefore, it is proved that a theft was committed and that soon after it was committed, the stolen property was recovered from the possession of the accused, the prosecution can, without proving any additional fact, request the Court to presume that the accused is either the thief or the receiver of the property, knowing it to be stolen.

14. The presumption mentioned in illustration (a) to Sec. 114 of the Indian Evidence Act, it will be noticed, is an alternative one. Whether in a particular case the Court will presume that the accused is a thief or whether it will be presumed that the accused is a receiver of stolen property knowing it to be stolen, depends upon the facts and circumstances of each case. Generally speaking, if the recovery is very recent and there is no explanation at all as to how the accused came into possession of the stolen goods, it would be preferable to presume that he is the thief. But, keeping in view the circumstances of a particular case, there is nothing to prevent the Court from presuming that the accused is a receiver of stolen property. As Pollock, C.B. laid down in ***R. v. Langmead [9 Cox, 464]***:

> "If no other person is involved in the transaction, and the whole of the case against the prisoner is that he was found in possession of the stolen property, the evidence would no doubt point to a case of stealing rather than a case of receiving; but in every case, except indeed where the possession is so recent that it is impossible for any one else to have committed the theft, it becomes a mere question for the jury whether the person found in possession of the stolen property stole it himself or

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> received it from some one else. If there is no other evidence, the jury will probably consider, with reason, that the prisoner stole the property; but if there is other evidence, which is consistent either with his having stolen the property, or with his having received it from some one else, it will be for the jury to say which appears to them the more probable solution."
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> **15.** If this presumption is drawn, it will be in respect of all the essential ingredients of the offence concerned. If, for instance, the offence presumed is theft, it will be presumed and will not have to be proved that the accused removed the property from the possession of another person dishonestly. In case the presumed offence is one under Sec. 411, I.P.C., guilty knowledge and earlier possession of another person will be presumed and will not have to be proved.

31. It was submitted that it was not possible to commit the theft of the tipper without the key. This submission will also not help the accused. Sohan Singh (PW-1) and Geeta Ram (PW-3) specifically stated that the Euro-II vehicle can be started without the key. Therefore, the possibility of starting and taking away the tipper without the key cannot be ruled out.

32. It was submitted that the tipper was red, but its colour was changed. No person was examined to prove that the accused had asked him to change the colour. This submission will not help the accused. The accused got the tipper recovered, and he is the only person who can explain how the colour was changed. The prosecution could not have known about the person who had

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changed the colour if this fact was not disclosed by the accused. Hence, the prosecution version cannot be doubted because the painter who had changed the colour of the tipper was not examined.

33. The judgment in ***Jaswinder Singh*** (supra) holds that the delay in recording the statement of the witness will make the prosecution case doubtful. In the present case, there is no delay in recording the statements of the witnesses. The judgments in ***Jai Prakash Yadav*** (supra) and ***Narender Singh*** (supra) deal with the principles of appreciation of the case based upon circumstantial evidence. In the present case, it has been duly proved that accused Guman Singh had made a call to the owner Yashwant Singh and Munshi Sohan Singh asking them to park the tipper at Dofti; the tipper was found missing the next day, and the accused got the tipper recovered. All these circumstances taken together can lead to only one inference that the accused had committed the theft, and the cited judgments do not help the accused.

34. Mohammad Deen and Pawan Kumar (PW-8) made statements regarding Rajesh Kumar, co-accused, who has been acquitted, and the fact that they had not supported the

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prosecution version does not make it doubtful. Mast Ram (PW-5) and Surinder Singh (PW-7) are the witnesses to recovery; however, they admitted their signatures on the seizure memo and that they know accused Guman Singh. They have not provided any explanation for putting their signatures on the memo, and their testimonies cannot be used to discard the prosecution version.

35. Therefore, the learned Courts below had rightly accepted the prosecution version and convicted the accused Guman Singh of the commission of an offence punishable under Section 379 of the IPC, and there is no infirmity in the judgment of conviction passed by the learned Trial Court.

36. The offence under Section 379 of the IPC is punishable with imprisonment which may extend to three years or with fine. The learned Trial Court had imposed the maximum sentence. The learned Trial Court was influenced by the fact that the accused had escaped from custody; but for that, a separate punishment has been provided, and a separate FIR has been registered. The commission of the theft is not accompanied by aggravating circumstances to justify the imposition of the maximum sentence.

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Therefore, the imposition of imprisonment of three years cannot be justified.

37. The incident had taken place in the year 2007. Nineteen years have lapsed since the incident. The accused had faced the agony of trial, appeal, and revision. Hence, considering the totality of the circumstances in which the theft was committed and the time lapsed since the incident, the sentence is reduced to rigorous imprisonment of one year from three years.

38. In view of the above, the present revision is partly allowed, and the sentence imposed by the learned Trial Court is reduced to one year from three years for the commission of an offence punishable under Section 379 of the IPC. Subject to this modification, the rest of the judgment and order are upheld.

39. A copy of this judgment, along with records of the learned Courts below, be transmitted forthwith.

(Rakesh Kainthla)
Judge

23rd November, 2026
(Chander)