

**HIGH COURT OF MADHYA PRADESH:**  
**BENCH AT INDORE**  
**Cr.R.No.2572/2018**  
***(Deepak Ludele Vs. State of M.P.)***

**Indore, Dated: 17.12.2019**

Shri S.K. Meena, learned counsel for the applicant.

Shri Vikas Yadav, learned public prosecutor for the respondent/State.

The applicant/accused has filed the present criminal revision under Section 397 read with Section 401 of the Cr.P.C against the judgment dated 10.03.2018, passed by the Judicial Magistrate, Second Class, Indore whereby he has been acquitted under Section 379 but convicted under Section 411 of IPC and sentenced accordingly and also against the judgment dated 31.05.2018, passed by the Additional Sessions Judge, whereby his criminal appeal has been dismissed.

Facts of the case, are as under:

That Ms.Neetu Singh, Daughter of Prahlad Singh lodged an FIR in Police Station, Sanyogitaganj, Indore on 11.04.2012 alleging that on 11.04.2012 near about 18:00 hours while she was going to Apollo Hospital from her hostel by walk, then near Rukmani Motors, Geeta Bhawan two persons came in the motorcycle and out of 2 one who was sitting on the rear seat has snatched her mobile phone from her hand and both fled away. She purchased the mobile of Nokia Company double sim (Nokia C2) ten days back in Rs.2,700/- and she could not

note the number of the motorcycle and identified the two persons. The FIR was registered under Section 379 of IPC against two unknown persons. On 24.09.2012 at around 10:30 hours the Police has arrested the present applicant from Jai Hind Nagar, Indore (Exhibit P/2). A mobile of Nokia Company white color containing a sim of Idea and one sim of Reliance Smart was seized from his possession vide Exhibit P/3. After completing the investigation the challan was filed under Section 379 and 411 of IPC against him. After examining the material available in the final report vide order dated 29.12.2012 learned Magistrate has framed the charges vide under Section 379 and in alternate framed the charge under Section 411 of IPC. In support of the case prosecution examine Aparbal Yadav (Seizure witness) as PW<sub>1</sub>, Ram Murti Pandey (Sub Inspector) who lodged the report as PW<sub>2</sub> and B.L. Sharma, Sub Inspector (Investigating Officer) as PW<sub>3</sub> and independent witness Babu Khan as PW<sub>4</sub>. PW<sub>1</sub> & PW<sub>4</sub> have turned hostile and did not support the case of the prosecution in respect of seizure of mobile from the applicant. The PW<sub>3</sub> has deposed in the Court that after registration of the FIR on the basis of call details he arrested the applicant and interrogate him in the presence of witness and thereafter he disclosed that the stole mobile is lying on the table in his house and which was recovered. In cross-examination he

admitted that he could not arrest the other accused involved in the offence. The present applicant in his statement under Section 313 has denied his involvement and pleaded that he has been falsely implicated in the present case. Learned Magistrate after appreciating the evidence came on record as acquitted the applicant under Section 379 of IPC but convicted under Section 411 of IPC and sentenced him to undergo 6 months RI with fine of Rs.1,000/- and 10 days additional RI in default of payment.

Being aggrieved by the aforesaid judgment, the applicant preferred an appeal but same has been dismissed vide judgment dated 31.05.2018, hence, present criminal revision before this Court.

I have heard learned counsel for the parties.

The FIR was lodged in the Police Station on 11.04.2012 by Neetu Singh alleging that two persons came on the motorcycle and one of them snatched the mobile from her hand. The Police did not demand the bill or voucher of the stolen mobile despite of the fact she purchased the mobile 10 days back in Rs.2,700/-. After the period of 5 months the present applicant was arrested and one Nokia mobile was recovered from his possession. He was charged under Section 379 and 411 of the IPC. The complainant did not enter into the witness box in support of the allegations. No document has been

seized by the Police in respect of ownership of the mobile of the complainant. Since, she did not entered into the witness box and did not identified the present application as well as the mobile, therefore, the applicant has been acquitted under Section 379 of the IPC. Learned Magistrate has held that the prosecution has failed to prove that the accused has taken the mobile from the complainant Neetu Singh on 11.04.2012 against her consent and stolen the property but held that the prosecution has proved that the stolen mobile was found in the possession of the present applicant, hence, he has been convicted under Section 411 of IPC. Learned Court has convicted the applicant on the basis of presumption under Section 114 of the Indian Evidence Act that he was aware that the mobile is a stolen property and he had no right to receive or retain the same. Learned Magistrate has held that since the accused has failed to produce any document in respect of ownership of mobile, therefore, it can be presumed that it is a stolen property.

The prosecution has filed the challan in which charges under Section 379 and 411 of IPC has been framed but the learned Court has framed main charge under Section 379 and as an alternate framed the charge under Section 411 of IPC. Since, the prosecution has failed to prove that the applicant has stolen the mobile or has dishonestly taken the mobile out of the possession of

the complainant Ms. Neetu Singh without her consent and he has not committed any theft, therefore, mobile belonging to complainant cannot be termed as “stolen property”. The charge under Section 411 of IPC has been framed as an alternate and according to which whomsoever dishonestly receives or retain any stolen property knowing or having reason to believe the same to be a stolen property shall be punished. The burden is on prosecution to prove that the said mobile is a stolen property. As per the format of charge under Section 411 of IPC, the accused has to know or believe that specified property is belonging to 'X' and to be a stolen property, then only he can be punished under Section 411 of IPC. Since, the mobile (Nokia C2) was found in possession of the applicant for which he failed to produce any receipt or voucher in respect of purchase, it cannot be presumed that the said property is stolen property. The stolen property is defined in Section 410 of IPC and according to which, the possession of the property has been transferred by way of theft, or by extortion, or by robbery and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “stolen property”. Merely the property found in possession of a person for which applicant is not having any documentary evidence to prove of ownership, it cannot be treated as a stolen

property, unless it has been established that the said property has been transferred by way of theft or by way of extortion, robbery or by way of misappropriation, criminal breach of trust etc. The burden under Section 411 was on the prosecution to prove that the applicant has received the property i.e. mobile dishonestly and the same is a stolen property. Since, the charge of theft has not been proved, therefore, he cannot be convicted under Section 411 of IPC with the aid of Section 114 of the Indian Evidence Act. As per Section 114 of the Indian Evidence Act the Court may presume the existence of any fact which it think likely to have happened. As per the illustration (a) a man who is 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. As per illustration the man or accused must be in possession of the stolen good soon after the theft.

The Apex Court in case of *Mukund Alias Kundu Mishra & Another Vs. State of M.P, reported in (1997) 10 SCC 130* has held that prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered. A Court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles

were found committed the robbery but also that he committed the murder.

In the present case, alleged loot took place on 11.04.2012 and that too has not been proved by the prosecution and after around six months i.e. on 24.09.2012 one mobile was recovered from the possession of applicant, therefore, it cannot be presumed that the said mobile is a stolen property. Therefore, on the basis of presumption he has wrongly been convicted under Section 411 of IPC, hence, both the judgment of conviction is hereby set aside. The fine amount be returned to him. He is acquitted from the charge of Section 411 of the IPC.

Present criminal revision stands **allowed**.

**(VIVEK RUSIA)**  
**Judge**

*Jasleen*