

FORM-A

**IN THE COURT OF SRI SANDEEP KUMAR MOHANTY,
J.M.F.C.(L.R & L.T.V), BERHAMPUR, GANJAM.**

**Present: Sri Sandeep Kumar Mohanty,
J.M.F.C. (L.R & L.T.V), Berhampur
J.O. Code-OD-00888.**

Dated this 11th day of August, 2023.

**[G.R. 982 of 2020]
TR No. 104/22**

ARISING OUT OF B.TOWN P.S CASE No. 114 DTD. 12.06.2020 U/s.
379 IPC

COMPLAINANT:	State Of Odisha
REPRESENTED BY:	Sri. Nitendra Pradhan, Ld. A.P.P, Berhampur
ACCUSED PERSONS:	1.Manoj Kumar Sahu, S/o. Budhimanta Sahu of Village - Khanduru, P.S-Polsara, Dist-Ganjam. 2.Prabhakar Pradhan s/o- Gokulananda Pradhan,Village - Sankarakhola, PS- Tikabali, Dist- Kandhamal.
REPRESENTED BY:	Ld. Advocate Sri Krushna Prasad Pattnaik and Ld. Advocate Sri Saroj Kumar Gouda & Associates, Berhampur, Ganjam

FORM-B

DATE OF OFFENCE:	09.06.2020
DATE OF FIR:	12.06.2020
DATE OF CHARGESHEET/P. R:	24.10.2020
DATE OF FRAMING OF CHARGE/ SUBSTANCE OF ACCUSATION STATED:	09.06.2021
DATE OF COMMENCEMENT OF EVIDENCE:	17.02.2021
DATE ON WHICH JUDGMENT IS RESERVED:	11.08.202 3
DATE OF THE JUDGMENT:	11.08.202 3
DATE OF THE SENTENCING ORDER:	--

ACCUSED DETAILS:

RANK OF THE ACCUSED	NAME OF THE ACCUSED	DATE OF ARREST	DATE OF RELEASE ON BAIL	OFFENCES CHARGED WITH	WHETHER ACQUITTED OR CONVICTED	SENTENCE IMPOSED	PERIOD OF DETENTION UNDERGONE DURING TRIAL FOR PURPOSE OF SECTION 428, Cr.P.C
1	MANOJ KUMAR SAHU	ALREADY IN CUSTODY	15.03.2022	u/s.379/34 IPC	ACQUITTED	N/A	N/A
2	PRABHAKAR PRADHAN	ALREADY IN CUSTODY	28.06.2022	u/s.379/34 IPC	ACQUITTED	N/A	N/A
STATUS OF THE ACCUSED PERSONS: ACCUSED PERSONS ARE ON BAIL							

J U D G M E N T

1. The above named accused persons stands prosecuted for commission of the offence punishable sections 379/34 Of Indian Penal Code (here-in-after referred to as “IPC”).
2. Shorn of unnecessary details, the prosecution case in brief is that On 09.6.2020 at 7.25 P.M Complainant Runali Panigrahy (38) W/O - Saroj Panigrahy of Sashtri Nagar 3rd Lane, Berhampur, PS: Gosannuagaon left from her house for her personal work by her Honda Activa Scooty bearing Red.No OD-07-AD-3017. At Bijipur Main road in front of SBI ATM she parked her Honda Activa bearing Regn. No. OD 07 AD 3017 duly locked and gone for withdrawal of money. After due withdrawal of money within 5 to 7 minutes when she came out from ATM and she found that her Honda Activa Scooty was not there and some unknown culprits have committed by

opening the lock of her Honda Activa Scooty. She searched her Honda Activa Scooty in the nearby area and while searching she has also lost her purse where containing the key of her vehicle.

Aggrieved by this incident IIC, B.Town P.S Suresh Kumar Tripathy registered the case vide P.S Case No-114 dtd 12.06.2020 u/s - 379 IPC and took up investigation of the case. During the said investigation, he visited the spot, prepared the spot map, examined the complainant and witnesses, seized the scooty and thereafter submitted charge sheet having no. 208 dtd 24.10.2018 u/s 379/34 IPC. Hence this case.

3. The plea of the accused persons are one of complete denial and false implication.
4. The points that need to be determined in this case are as follows:

I. Whether on 09.6.2020 at 7.25 P.M the accused persons in furtherance of their common intention committed theft of Honda Activa Scooty wherein it was duly locked and parked with dishonest intention, without the consent of the informant & out of his possession and thereby committed an offence u/s 379/34 IPC ?

5. In order to prove its case, the prosecution had examined three numbers of witnesses. The informant is examined as P.W.3. and

P.W.2 & P.W.1 are the chance witness. The defence on the other hand, had not adduced any evidence on its behalf.

6. During the course of trial, PW1 & PW stated their ignorance about the incident.
7. During the course of trial, PW3 deposed that she is the informant of this case and she do not know the accused persons of this case. Since three years ago in the evening 7-8 PM while she was withdrawing money from SBI ATM at Bijipur Square she found that she could not find her Honda Activa vehicle where it was parked. After that she lodged the FIR at the Berhampur Town police station. This is the FIR marked as EXT.P-1/PW3 and the signature thereon marked as EXT.P-1¹/PW3. This is the seizure list marked as EXT.P-2/PW.3 and the signature thereon marked as Ext.P-2¹/PW3. This is the zimanama marked as EXT.P-3/PW3 and the signature thereon marked as EXT.P-3¹/PW3. Another Zimanama marked as EXT.P-4/PW3 and the signature thereon marked as EXT.P-4¹/PW3. In her cross examination she deposed that after two months she got a call from the PS and she identified her vehicle. After fifteen days she got her vehicle back. She cannot say from whom the bike was seized or recovered.

She also cannot say who had stolen her vehicle and she don't know against whom the case has been lodged. 5She had already got her bike and she don't want to proceed further in this case.

8. So far as the present case is concerned, the informant had not uttered a single word implicating the accused persons and deposed not to proceed further in connection with this case. Therefore, the contents of the FIR remained unproved and the FIR being not the substantive piece of evidence and the evidentiary value thereof being limited to the extent of simply being used for the purpose of corroboration or contradiction of the maker thereof, the FIR is of no avail with prosecution in this case.
9. After, perusal of the evidence on record it is found that there is no material available in the record to establish that the present accused persons were associated with the commission of the alleged offence and prosecution has miserably failed to prove its case beyond reasonable doubt. Moreover, In **Madan Mohan Abbot v. State of Punjab reported in (2008) 4 SCC 582: (2008) 2 SCC (Cri) 464: 2008 SCC OnLine SC 564 at page 584** reiterated in the case of **B. Sathish Reddy v. State of**

Orissa, 2019 SCC OnLine Ori 296 it is observed interalia that:-

“We need to emphasize that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach based on ground realities and bereft of the technicalities of the law”.

10. Considering the evidence and the circumstances presented before this Court, mainly the informant who says clearly that he does not want to proceed in this case and from the aforesaid discussion this court concludes that the prosecution has miserably failed to prove its case beyond reasonable doubt against the accused persons for the offence charged with u/ss. 379/34 of the I.P.C.
11. Hence, the above point for determination do not succeed against the accused persons and

they are being acquitted therefrom as per section 248(1) Cr.P.C. The accused persons shall be set at liberty forthwith and the bail bonds of the accused person shall be in force till next six months from today as per Section 437A of the Cr.P.C.

12. Seized articles, if any, shall be retained by its zimadar and the zimanama executed, if any, shall be cancelled four months after expiry of period of limitation for appeal, if no appeal is preferred, or else as per the direction of the Hon'ble Appellate Court in case of appeal.

Enter this case as a mistake of fact.

Pronounced the judgment in the open court under my signature and seal of the court on this 11th day of August, 2023.

J.M.F.C (L.R&L.T.V), Berhampur

This judgment is typed out and corrected by me in my personal computer and pronounced in the open court today on this day of 11th August, 2023 under my hand and seal of this court.

J.M.F.C (L.R&L.T.V), Berhampur

FORM-C

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES		
A. PROSECUTION WITNESSES		
RANK	NAME	NATURE OF EVIDENCE
P.W.1	BIJAY SETHI	CHANCE WITNESS
P.W.2	BAIRAGI SAHU	CHANCE WITNESS
P.W.3	RONALI PANIGRAHI	COMPLAINANT
B. DEFENCE WITNESSES, IF ANY		
RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL
C. COURT WITNESSES, IF ANY		
RANK	NAME	NATURE OF EVIDENCE
NIL	NIL	NIL
LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS		
A. PROSECUTION EXHIBITS		
SL. NO.	EXHIBIT NO.	DESCRIPTION
1	EXT.P.1/PW.3	F.I.R
2	EXT.P.1 ¹ /PW.3	SIGNATURE OF PW.3 ON FIR
3	EXT.P.2/PW.3	SEIZURE LIST.
4	EXT.P.2 ¹ /PW.3	SIGNATURE OF PW.3 ON SEIZURE LIST.
5	EXT.P.3/PW.3	ZIMANAMA
6	EXT.P.3 ¹ /PW.3	SIGNATURE OF PW.3 ON ZIMANAMA
7	EXT.P.4/PW.3	ZIMANAMA
8	EXT.P.4 ¹ /PW.3	SIGNATURE OF PW.3 ON ANOTHER ZIMANAMA.
B. DEFENCE EXHIBITS, IF ANY		
SL. NO.	EXHIBIT NO.	DESCRIPTION
NIL	NIL	NIL
C. COURT EXHIBITS, IF ANY		
SL. NO.	EXHIBIT NO.	DESCRIPTION
NIL	NIL	NIL
D. MATERIAL OBJECTS:		
SL. NO.	EXHIBIT NO.	DESCRIPTION
NIL	NIL	NIL

J.M.F.C (L.R & L.T.V), Berhampur