

Received on : 28.06.2018
Registered on : 28.06.2018
Decided on : 13.08.2018
Duration : 01 Ms. 16 days

**IN THE COURT OF 36th METROPOLITAN
MAGISTRATE, MUMBAI CENTRAL, MUMBAI**

(Presided over by S. R. Narwade)

Police Warrant Case No. 409/2018
(CNR No. MHMM260010492018)

Exh. 09

State of Maharashtra,
through, Police Station Officer,
Railway Police Station, Bandra,
Dist. Mumbai.

..... **PROSECUTION**

VERSUS

Javed Mohammad Umar Patni,
Age : 42 yers, Occ.: Nil.
R/o.: Room No. F/1/16, Mhada
Chawl, Khokhari Agar, Near RTO,
GTB Nagar, Mumbai.

..... **ACCUSED**

**OFFENCE PUNISHABLE UNDER SECTION 379 OF
THE INDIAN PENAL CODE, 1860.**

.....
Mrs. S. P. Shetty, Assistant Public Prosecutor
The accused in person.
.....

JUDGMENT

(Delivered on this 13th day of August, 2018)

The accused in the dock is charged with the offence
punishable under section 379 of the Indian Penal Code, 1860.

02. Briefly, stated the case of the prosecution is that on 13.06.2018 at about 3:00 pm the informant Prakash Anant Chalke (PW No. 1 – Exh. 4) was boarding in up Churchgate local train at Bandra railway station. At that time, the accused had stolen the mobile handset Panasonic made of the informant. The informant shouted as '*Chor-Chor*'. The passengers of Bandra railway station caught the accused and he was brought to Railway Police Station, Bandra. The search of the accused was taken in presence of the pancha witnesses and accordingly seizure panchanama (Exh. 8) was prepared. Thereafter, the informant lodged report with Railway Police Station, Bandra. On the basis of his report an offence punishable under section 379 of the Indian Penal Code, 1860, came to be registered vide Crime No. 1442/2018. The Investigating Officer Mr. Sunil Appasaheb Khot (P.W.2 - Exh.7), investigated in to the matter. During the course of investigation, he arrested the accused in presence of panch witnesses and prepared arrest panchanama. Further, he recorded the statements of the witnesses as per their say and after completion of the investigation, he chargesheeted the accused for the offence punishable under section 379 of the Indian Penal Code, 1860.

03. I framed the Charge against the accused for the offence punishable under section 379 of the Indian Penal Code, 1860, vide Exh. 2. The contents of charge were read over and explained to the accused, in vernacular to which he abjured the guilt and claimed to be tried vide Exh. 3. I recorded the statement of the accused under section 313 of the Code of Criminal Procedure 1973. The defense of the accused is of total denied.

04. The points for determination along with my findings thereon are as under.

<u>POINTS</u>	<u>FINDINGS</u>
01) Whether the prosecution proves that the accused intending to take the dishonestly mobile handset Panasonic made, out of possession of the informant Mr. Prakash Anant Chalke without his consent and moved the same in order to such taking?	 <u>Yes.</u>
02) Whether the prosecution proves that the accused entered and trespassed in railway premises without lawful authority and misused railway property?	 <u>Yes.</u>
03) What order ?	<u>The accused is convicted.</u>

REASONS

AS TO POINT NOS. 01 AND 02 :-

05. In order to bring home, the guilt of the accused, the prosecution has examined two witnesses. The informant deposed that on 13.06.2018 at about 3:11 pm he was boarding in up Chrchgate local train, at that time the accused stole his mobile handset Panasonic made and was fleeing away. He further deposed that he chased the accused by shouting as '*Chor-Chor*'. He further deposed that the accused was caught by the passengers and thereafter, he was taken to Railway Police Station, Bandra. He further deposed that the search of the accused was taken in presence of the panch witnesses. At that time the accused was found in possession of mobile handset of

the informant. The accused during cross-examination of the informant did not dispute that he has stolen his mobile handset. On the contrary, he has admitted that he had stolen the mobile handset of the informant at Sion. Therefore, the evidence of the informant inspires confidence.

06. It has also come in the evidence of the Investigating Officer the accused was caught by the passengers, when he was fleeing away by stealing the mobile handset of the informant. It has further come in the evidence that during the course of search, the accused was found in possession of mobile handset of the informant. The accused has challenged the version of the Investigating Officer, but he did not dispute that he has stolen the mobile handset of the informant. In the evidence of the informant and the Investigating Officer it is proved that the accused has intending to take dishonestly mobile handset of the informant without his consent moved the same in order to such taking. Moreover, it is also proved that the accused entered in railway premises i.e. Bandra railway station without obtaining valid ticket or pass and committed the theft and thereby misused the railway property. Hence, I answer the point Nos. 01 and 02 in the affirmative.

AS TO POINT NO. 03:-

07. The prosecution has proved the guilt of the accused. The record goes to show that the accused is habitual and he is convicted in numbers of cases, prior to this incident. Therefore, it would not just and proper to give the benefit of the Probation of Offenders Act, 1958 to him. Hence, the accused is liable to be convicted. Therefore, I stop further reading of the judgment for hearing on the quantum of sentence.

o8. The accused submits that he is very poor and he is only bread earner of his family. Therefore, he prayed for leniency. The learned APP Mrs. S. P. Shetty submits that the accused is habitual, therefore, he may be severely punished. Considering submission of the accused, in my view, lenient view will have to be taken, while awarding sentence. The seized mobile has been handed over to the informant on indemnity bond. Considering fact of the case, in my view, the seized mobile handset Panasonic made will have to be retained by the informant and his indemnity bond will have to be cancelled. Therefore, in these circumstances, in answer to point No. 03, I pass the order.

ORDER

(01) The accused namely Javed Mohammad Umer Patni, R/o.: Room No. F/1/16, Mhada Chawl, Kokhari Agar, Near RTO, GTB Nagar, Mumbai is convicted for the offence punishable under section 379 of the Indian Penal Code vide section 248 (2) of the Code of Criminal Procedure and he is sentenced to suffer rigorous imprisonment for 04 (Four) months.

(02) The accused is further convicted for the offence punishable under section 147 of the Railways Act vide section 248 (2) of the Code of Criminal Procedure and he is sentenced to suffer rigorous imprisonment for 04 (Four) months.

(03) Both the sentences shall run concurrently.

(04) Set off be given to the accused under section 428 of the Code of Criminal Procedure from 13.06.2018 till date.

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(05) The seized mobile handset Panasonic made, shall be retained by the informant Mr. Prakash Anand Chalke, R/o.: Room No. 3, Omkar Niwas Chawl, Balajiwadi, Satyawar Chowk, Dombivoli (W), District Thane and his indemnity bond is cancelled,

Date :- 13.08.2018

Sd/-
(S. R. Narwade)
Metropolitan Magistrate,
36th Court, Mumbai Central,
Mumbai.