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CNR No. MHMM19-006174-2018

Exh.11

**BEFORE 65th METROPOLITAN MAGISTRATE,
ANDHERI, MUMBAI.
(Presided over by C.P. Kashid)
(Judgment as per Sec. 355 of the Cr.P.C.)**

- (a) The serial number of the case; : C.C. No. 1556/PW/2018
- (b) The date of commission of offence; : On 26.03.2018 at about 10.00 p.m. till 27.03.2018 at about 09.30 a.m.
- (c) The name of the informant, if any; : Through PSO Andheri Police Station (CR No.166/2018)
- (d) The name of the accused person, his parentage and residence; : Mohammad Farukh Gulab Patel
Age : 24 years
Occupation : Nil
R/o.: Room No.7,
Ganesh Pada, Andheri East,
Mumbai.
- (e) The offence complained of or proved; : U/Sec.454, 457, 380 r/w Sec.34 of the Indian Penal Code
- (f) The plea of the accused and his examination, (if any); : Accused pleaded not guilty
- (g) The final order; : As Per Final Order

h) The date of such order; : 20/02/2023

**Appearance : APP. Samrat Patil for the State
Adv. R.T. Shaikh for accused**

JUDGMENT

(Delivered on 20/02/2023)

1. Accused has been charge-sheeted for the offences punishable U/Sec.454, 457, 380 r/w Sec.34 of the Indian Penal Code (for short "IPC").

The prosecution case in short is as follows :-

On 27.03.2018 at about 09.30 a.m., when informant opened his shop namely S. B. Communication, Shop No.3, Aaradhana Co-operative Housing society, Andheri East, Mumbai, he found that someone had broken the lock of his shop. He also found that someone had committed lurking house trespass in said shop and committed theft of cash, laptop and mobile total worth of Rs.1,35,490/- belonging to the informant. Therefore, the informant went to Andheri police station and lodged FIR against unknown person. As per FIR, crime No. 166/2018 registered against the unknown person. Thereafter, Investigating Officer started investigation. During investigation, he recorded statement of witnesses. He arrested the accused, he prepared spot panchanama, memorandum panchanama and seized one mobile of Rs.18,900/- from accused and prepared its seizure panchanama and after completion of investigation submitted charge-sheet against the accused.

2. I have framed charge against the accused vide Exh.2 and it read over and explained to accused in vernacular, to which he pleaded not guilty and claimed to be tried. The statement of the accused is recorded U/Sec.313 of CrPC. His defence is of total denial and false implication.

3. Following points arise for my determination and I have recorded findings thereon for the reasons discussed herein after :-

S.NO.	POINTS	FINDINGS
1	Whether prosecution prove that on 26.03.2018 at about 10.00 p.m. till 27.03.2018 at about 09.30 a.m. at S. B. Communication, Shop No.3, Aaradhana Co-operative Housing society, Andheri East, Mumbai, accused committed lurking house trespass by entering into the above-said place of the informant in order to commit offence of theft ?	No
2	Whether prosecution prove that on above said date, time and place, accused committed house breaking after sunset and before sunrise by entering into above said place in order to commit offence of theft ?	No

3	Whether prosecution prove that on above said date, time and place, accused committed theft from the above said place of informant without his consent ?	No
4	What order ?	As per final order

REASONS

As to points No. 1 to 3 :

4. In order to establish guilt of the accused, prosecution has examined total two witnesses i.e. the informant namely Kailash Sharma as PW1 at Exh.4 and Investigating Officer API Yashwant Patil as PW2 at Exh.6.

5. It has come in the evidence of PW1 that when he opened his mobile shop, he found lock of shutter was broken and mobiles and laptop and cash was stolen by someone. Therefore, he went to police station and lodged FIR (Exh.5) against unknown person. During cross examination, he admitted that he did not see any person while committing theft and he did not see the accused in the police station. He further stated that he do not want to proceed further against the accused. Thus it shows that PW1 has not stated anything incriminating against the accused. Therefore his evidence is not helpful to the prosecution.

6. The evidence of PW2 shows that during the investigation,

he arrested the accused and recorded memorandum statement of the accused and prepared its memorandum panchanama (Exh.7). Thereafter he, accused, panch witness and police staff went to the house of the accused and he took out stolen mobile from his cupboard. PW2 seized that stolen mobile and prepared its seizure panchanama (Exh.8) and after completion of investigation, he submitted charge-sheet. During cross examination, he admitted that he recovered only one mobile from the possession of the accused.

7. The evidence of PW2 shows that seized mobile was not shown to him during examination. It is the case of the prosecution that five mobiles, two laptops and cash of Rs.24,000/- of the informant was stolen. But it shows that only one mobile was recovered from the custody of the accused and the identification or description of mobile was not given in panchanama. Therefore, it is not proved that seized mobile belongs to the informant. Moreover, the prosecution has not examined any panch witness to prove seizure panchanama. The prosecution has not examined any eye witness of the incident. It shows that the evidence of PW1 is not supported to the prosecution. Therefore, considering above discussion, I come to the conclusion that there is no sufficient and cogent evidence on record to prove that accused has committed theft as alleged by the prosecution.

8. Thus, considering above discussion, I come to the conclusion that the prosecution has failed to prove the case against

the accused beyond reasonable doubt. Therefore, I answered points No.1 to 3 in the negative. Therefore, accused is entitled to be acquitted from the charges levelled against him. Hence for answering point No.4, I pass following order :-

ORDER

- 1) Accused is acquitted of the offences punishable U/Sec.454, 457, 380 r/w Sec.34 of IPC vide Section 248(1) of the Cr.P.C.
- 2) His bail bonds (if any) are cancelled.
- 3) The accused is directed to furnish P.B. & S.B. of Rs. 15,000/- or cash bail of the same for appearance before the Hon'ble Appellate Court towards the compliance of Section 437(A) of the Cr.P.C.
- 4) Seized muddemal be returned to its real owner if not returned after appeal period is over.
- 5) Dictated & declared in the open Court.

Date : 20.02.2023

(C.P. Kashid)
Metropolitan Magistrate
65th Court, Andheri, Mumbai.

ask
Dictated &
typed on : 20.02.2023
Signed on : 20.02.2023