

IN THE COURT OF JUDICIAL MAGISTRATE-02, SOUTH EAST,
SAKET COURTS, DELHI

Presided By Ms. Akansha Gautam

DLSE020055962023



FIR NO. 33/2023
PS. OKHLA INDUSTRIAL AREA
U/s. 379/411/34 IPC

JUDGMENT

A. SL. NO. OF THE CASE	: 2195/2023
B. DATE OF INSTITUTION	:03.03.2023
C. NAME OF THE COMPLAINANT	:Mohit S/o Pratap Singh
D. NAME OF THE ACCUSED	: 1) Ravi Kumar @ Surajpal S/o Sh.Kunwar Pal 2) Tofiq Ahmed S/o Sh. Rahis Ahmed
E. OFFENCE COMPLAINED OF	:U/s 379/411/34 IPC
F. PLEA OF ACCUSED	:Pleaded not guilty.
G. FINAL ORDER	:Acquittal
H. DATE OF COMMISSION OF OFFENCE	:11.01.2023
I. DATE OF JUDGMENT	: 07.02.2026

BRIEF FACTS

1. Briefly stated the facts of the case, as alleged by the prosecution that on 11.01.2023 after completing the work, the complainant Mohit after catching the DTC bus of route no. 433 from South Ex Bus Stop at he was coming to his house and at around 3:00PM, when the bus reached near the bus stop of NSIC, at the time of disembarking the bus, one boy took out his mobile phone from the right pocket of his pant and gave it to his associate. Both of them tried to flee away but they were caught red handed. Accordingly, FIR under section 379/411 IPC read with section 34 IPC was registered. Investigation was conducted and two persons namely Ravi Kumar @ Surajpal and Tofiq Ahmed were arrested.

2. Record shows that the cognizance was taken on 17.04.2023 and accused persons were summoned for the NDOH. On 31.07.2023, copy of the chargesheet was supplied to accused persons. On 24.11.2023, charges u/s 379/34 IPC was framed against both accused persons and section 411 IPC was also framed against accused Ravi, to which accused persons did not plead guilty and claimed trial. Matter was listed for prosecution evidence and PW Mohit was summoned for the NDOH. On 04.07.2024, the complainant did not appear. Again, On 23.10.2024, fresh summons were issued to the complainant. The process was received back unserved. On 03.02.2025, fresh summons through DCP concerned were issued against the complainant for the NODH. The summons was received back unserved. Notice was issued to the IO to trace fresh address of the complainant as well as effect service of summons upon him. Again, fresh summons were issued to the complainant through DCP concerned, which was received back as served, however, complainant did not appear.

Ultimately, PW Mohit was dropped from the list of witnesses. Remaining witnesses left to be examined, are formal in nature. No purpose will be served by examination of the said witnesses without examination of complainant.

3. In case titled "*Satish Mehra as vs. Delhi Administration*" 1996 JCC 507, Hon'ble Supreme Court has held that "*in a case where there is no prospect of the case ending in conviction, the valuable time of Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on the future date*". Since nothing incriminating has come on record against the accused persons, the statement of accused persons under Section 313 Cr.P.C. was dispensed with.

4. I have also carefully perused the case file. The cardinal principle of the criminal law is that the accused is presumed to be innocent till he is proved guilty, beyond any reasonable doubt. The burden of proving guilt of the accused persons, exclusively lies on the prosecution and the prosecution is required to stand on its own legs. The benefit of doubt, if any, must go in favour of the accused persons.

5. In order to prove the guilt of the accused persons **under section 379/34 IPC and of Ravi under section 411 IPC**, the prosecution was required to prove that the accused persons committed theft and accused Ravi received stolen property dishonestly. Needless to say, that for proving the ingredients as provided under section 379/34 IPC and section 411 IPC, it was necessary that the complainant must have entered the witness box

and had given the testimony in the court qua the allegations made in the complaint.

6. In the present case, the witness who could prove the essential ingredients of the offences with which the accused has been charged has not appeared in Court despite complete knowledge of proceedings and furthermore he was the victim/material/crucial witness for proving the prosecution version. The non-examination of the said witness has proved fatal to the prosecution case as in absence of his indispensable testimony, the prosecution case cannot be substantiated.

7. There is not even an iota of incriminating evidence against the accused to fix his liability *under section 379/34 IPC and of Ravi under section 411 IPC*. The prosecution has failed to prove its case by leading convincing and cogent evidence and thus have failed to discharge the onus placed upon it. Hence, the accused is entitled to benefit of doubt.

8. In the light of the above discussion, the accused *Tofiq Ahmed and Ravi Kumari are acquitted for the offence under section 379/34 IPC and Ravi Kumar is also acquitted under section 411 IPC*

Pronounced in the open court on 07.02.2026.

Judgment contains total 04 pages, each signed by the undersigned.

(AKANSHA GAUTAM)
JMFC-02/SE/Saket/ND
07.02.2026