

UTDN010017462022



RECEIVED ON : 14-10-2022
REGISTERED ON : 14-10-2022
DECIDED ON : 17-12-2022
DURATION : Ys. Ms. Ds.
00 02 03

IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS,
U.T. OF DADRA AND NAGAR HAVELI, AT SILVASSA
(Presided over by B. H. Parmar)

Regular Criminal Case No. 151/2022.
Exh.No.21.

The State,

Through : Sita Augustin Kakad

Age : 42 years,

Occupation : Service,

R/o : Vasda

.... Informant.

VERSUS

Vasan Laxman Nadge

Age : 39 years,

Occupation : Farming,

R/o : Chisda, Khanvel.

.... Accused.

Charge - Offence punishable under section 379 of the
Indian Penal Code, 1860.

Adv. P. G. Patel A.P.P. for the State.

Adv. Anil Bagul for the accused.

JUDGMENT

(Dictated and pronounced on 17.12.2022)

The accused is facing trial for the offence punishable under Section 379 of the Indian Penal Code, 1860.

Factual matrix of the case, is as follows

02. That the informant Sita Augustin Kakad (*hereinafter referred to as 'informant'*) is a resident of Vasda. The informant is working as a Anganwadi worker and she was provided J7 NXT Samsung mobile phone by government for his work. On 03.02.2022 the informant had gone to attend marriage at Dudhani during 23:30 hours and at that time she had kept her mobile phone on table and had gone to attend marriage rituals. After completing the rituals the informant had returned back and found that her mobile phone was missing. The informant had searched for his mobile phone in nearby area but he could not find the same. Informant thereafter filed complaint to Police Station.

03. On the basis of complaint Khanvel Police registered F.I.R. vide C.R. No. 121/2022 for the offence punishable under section 379 of the act. Thereafter, investigation was handed over to investigating

officer H.C. B.M.Vasava. During investigation, investigating Officer prepared spot and seizure panchnama, recorded statement of witnesses, seized property, prepared muddemal pavti and arrested accused and after completion of investigation he filed report under section 173 (2) of Code of Criminal Procedure 1973 against the accused for offence punishable under section 379 of the Indian Penal Code, 1860.

04. Accused appeared before the court. Charge was framed against the accused for the offence punishable under section 379 of the act vide (Exh.11). The charge was read over and explained to him in his vernacular, to which he pleaded not guilty and claimed to be tried. Statement of the accused is recorded at (Exh.12).

05. On considering rival contentions and the material on record the following points arose for determination of the case and I have recorded my findings thereon, along with reasons, as under:-

<u>Sr.No.</u>	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Does the prosecution prove that the accused on 03.02.2022 at about 23:30 hours at wedding function at Dudhani Nichlamedha dishonestly moved a certain property namely Samsung J7 mobile phone of informant from the table and moved the same without consent of the informant ?	No

2.	What order?	As per final order
----	-------------	--------------------

06. In order to prove the charges, the prosecution has examined three witnesses. Informant Sita Kakad as P.W.1 at Exh.14, and seizure panch witnesses Sunil Sole as P.W.2 at Exh.16 and Ramesh Kirkira as P.W.3 at Exh.18. Prosecution after examining the witnesses have closed their side by filing pursis at Exh.20. As no incriminating evidence came forth against the accused his statement u/sec 313 of Cr.P.C was dispensed with. The prosecution has filed on record Complaint at Exh.15.

REASONS.

AS TO POINT No. 1 :-

07. Prosecution in all have examined three witnesses out of which seizure panch witnesses Sunil P.W.2 and Ramesh P.W.3 have turned hostile. Hence, they both were cross examined by APP but nothing fruitful could be elicited from their evidence. Hence, prosecution failed to prove the seizure panchnama from the mouth of panch witnesses and as such failed to prove that the seized mobile was recovered from the instance of accused.

08. On perusal of evidence of Informant Sita Augustin P.W.1 it seems that she has only testified that she was having Samsung J7 mobile and on alleged day of incident i.e. 03.02.2022 she had gone to attend marriage function at Dudhani, Nichlamedha and had kept her mobile phone on the table and when he had returned back from marriage rituals she had found that her mobile phone was missing from where she had kept. Apart from it, there is no single iota of evidence as to who had committed the theft of his mobile phone. On the contrary it has come in her cross examination that she does not want to examine any further witnesses if she gets her mobile back. The said admissions is clear enough to infer that she does not wants to proceed further if she gets her mobile phone back.

09. Therefore, taking into consideration the discussions in the above foregoing paragraphs it seems that there is no iota of evidence against the accused to prove that he had stolen the mobile of the informant and the same was recovered from his possession. **Hence, I answer point number 1 in the negative.**

AS TO POINT No. 2:-

10. In view of above discussion prosecution failed to prove the charges leveled against the accused beyond reasonable doubt. Hence, the accused is to be acquitted for want of cogent evidence. **Hence, I answer point No. 2 as under :-**

ORDER

1. Accused Vasan Laxman Nadge is hereby acquitted under section 248 (1) of Code of Criminal Procedure, 1973 for the offence punishable under section 379 of Indian Penal Code 1980.
2. Bail bonds of the accused stand cancelled. Surety stands discharged.
3. Seized property i.e. Samsung J7 NXT mobile phone be returned back to its registered owner after appeal period is over.
4. The accused is directed to furnish P.R. & S.B bond of Rs.15,000/- (Fifteen Thousand only) to appear before higher court as and when such court issues notice in respect of any appeal or petition filed against this judgment and the said bond shall in force for six months under section 437 (A) of Code of Criminal Procedure, 1973 within seven days.

Judgment dictated and pronounced in open Court.

Silvassa.

Date:- 17.12.2022

Sd/-

(B. H. Parmar)

Judicial Magistrate (First Class)
Dadra Nagar Haveli
Silvassa.

CERTIFICATE

I affirm that the contents of this P.D.F. File judgment/or-
der are same, word to word, as per the original Judgment.

Name of the Clerk : J. H. Patel

Court : Judicial Magistrate First Class

Date : 17.12.2022

Judgment Signed by the Presiding 17.12.2022
officer on:

Judgment uploaded on : 17.12.2022

Judgment

8

**R.C.C. No. 151 / 2022
(Exh.21)**