

**IN THE COURT OF METROPOLITAN MAGISTRATE,  
36<sup>th</sup> COURT, MUMBAI CENTRAL, MUMBAI.  
Case No.: 208/PW/2018**

**Exh. 4**

The State of Maharashtra,  
through Police Station Officer,  
Bandra Railway Police Station,  
Mumbai, .... **PROSECUTION**

**VERSUS**

Kasim Mustakim Ansari alias Salman,  
Age 22 years, R/o.: Magdum Society, Janata  
Nayanagar Zopadpatti, S. V. Road, Mahim  
Link Road, Near Raheja Hospital, Mahim (W),  
Mumbai.

.... **ACCUSED**

**OFFENCE PUNISHABLE UNDER SECTION 379 OF  
INDIAN PENAL CODE.**

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Mrs. S. P. Shetty for the prosecution.  
The accused in person.  
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**JUDGMENT**

(Delivered on 20<sup>th</sup> day of June, 2018)

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

2] Brief is stated the case of prosecution is that on 06.03.2018 at about 13.10 hours the informant Mr. Shoeb Afsar Khan at Bandra Railway Terminus platform No. 7. At that time his mobile handset, Oppo made was stolen. The accused was arrested on suspicious. During investigation stolen property was recovered from the accused. Therefore, the informant filed report with police station Bandra (railway). On the basis of his report and offence punishable under sections 379 of the Indian

Penal Code was registered against the accused vide Crime No. 549/2018. The investigating officer Mr. S. G. Dudhe, Police Naik, Police Station Bandra (railway) investigated into the matter. He recorded statement of the witnesses as per their says, further, he seized mobile handset, Oppo made from the possession of the accused and prepared seizure panchanama in presence of panch witnesses and after completion the investigation he chargesheeted the accused.

3] I framed the charge against the accused for the offence punishable under section 379 of the Indian Penal Code vide Exh. 2. The contents of charge were readover and explained to the accused, in vernacular through Video Conference. The accused pleaded guilty.

4] The points for determination alongwith my findings thereon :

| <b><u>POINT</u></b>                                                                                                                                                                                                  | <b><u>FINDINGS</u></b>                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| 01) Whether the prosecution proves that the accused intending to take dishonestly a mobile handset, Oppo made of the informant Mr. Shoeb Afsar Khan without his consent moved the same in order to such taking? .... | <b><u>Yes.</u></b>                      |
| 02) What order? ....                                                                                                                                                                                                 | <b><u>The accused is convicted.</u></b> |

**AS TO POINT NO. 01 :**

5] The accused pleaded guilty. Therefore, the prosecution has proved that the accused has the accused intending to take dishonestly a mobile handset, Oppo made of the informant Mr. Shoeb Afsar Khan without his consent moved

the same in order to such taking. Therefore, I answer point No. 01 in the affirmative.

**AS TO POINT NO. 02 :**

6] The prosecution has proved the guilt of the accused. Therefore, the accused is liable to be convicted. I heard the accused on the point of quantum of sentence. He submits that he is poor and orphan person. He further submit that this is his first offence. Therefore, he prayed for leniency. The Learned APP Mrs. S. P. Shetty submits that the accused has severely punished, as per the law.

7] The record goes to shows that the accused has committed the theft of mobile handset, Oppo made. Therefore, in my view, it would not just and proper to punish the accused, severely. Though the accused did not submit anything in respect of quantum of sentence, in my view, considering facts of the case lenient view will have to be taken while imposing sentence. The seized mobile handset, Oppo made already given to the informant Mr. Shoeb Afsar Khan on indemnity bond. Considering fact of the case in my view, the informant shall retained seized article, which is taken by him on indemnity bond and his indemnity bond will have to be cancelled, after appeal period is over. Hence, in these circumstances, in answer to point No. 02, I pass the order :

**ORDER**

(01) The accused Kasim Mustakim Ansari alias Salman, resident of Magdum Society, Janata Nayanagar Zopadpatti, S. V. Road, Mahim Link Road, Near Raheja Hospital, Mahim (W), Mumbai, is convicted for the offence punishable under section 379 of Indian Penal Code and he is sentenced to suffer rigorous imprisonment for 04 (Four) Months vide section 241 of the Code of Criminal Procedure, 1973.

(02) Set off be given to the accused under section 428 of the Code of Criminal Procedure from 19.03.2018 till date.

(03) The sentences passed in C. C. No. 207/PW/2018, and 208/PW/2018 of Bandra Railway Police Station, Mumbai shall run concurrently

(04) The seized mobile handset, Oppo made shall be retained by the informant Mr. Shoeb Afsar Khan, R/o.: Jadwal Mohalla, Police Station Taitganj, District Farukhabad, State Uttar Pradesh and his indemnity bond will be cancelled, after appeal period is over.

Date : 20.06.2018

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