

MHJN070005372020 	Presented on : 23/07/2020 Registered on : 23/07/2020 Decided on : 08/07/2026 Duration : 05 11 15 Y. - M. - D.
	<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, JAFRABAD</u> (Presided over by A.N.Khatade) R.C.C. No.73/2020 Exhibit No.42 Date of the Judgment – 08/07/2026 Details of FIR- Crime No.200/2019, dt. 23.10.2019 Police Station -Jafrabad.
Prosecution	: State Of Maharashtra, Through Police Station Officer, Police Station- Jafrabad, Tq. Jafrabad, Dist. Jalna. Pradip Dyandev Sarade, R/o Police Station Jafrabad, Tq. Jafrabad, Dist. Jalna.
Represented By	: Ld. A.A.P. Shri A. M. Gaikwad
Accused	: Muralidhar Sahebrao Folane, Age : 27 Yrs., R/o. Takli, Tq. Jafrabad Dist Jalna,
Represented By	: Adv. Shri. V. M. Shinde

Part 'B'

Date of Offence	23/07/2020
Date of FIR	23/10/2019
Date of Charge sheet	23/07/2020
Date of framing of Charges	16/07/2022
Date of commencement of evidence	15/03/2023
Date on which judgment is reserved	08/07/2026
Date of Judgment	08/07/2026

Date of the Sentencing Order, if any	Not Applicable
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-: Accused Details :-

Rank	Name	Date of Arrest	Date of Release on Bail
1	2	3	4
1.	Muralidhar Sahebrao Folane,	Oral intimation	02/11/2019

Offences charged on Bail	When acquitted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P.C.
5	6	7	8
Under Section 379 of Indian Penal Code and Section	acquitted	NA	NA

: J U D G M E N T :

(Pronounced on 08/07/2026)

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

In short, the prosecution case is that:

2. On 23.10.2019 at about 12.30 accused was found dishonestly moving sand in tractor bearing registration no. MH-28-D-7075 and trolley registration no. MH-28-E-6017 without legal permit or royalty in illegal possession of sand carrying in a tractor attached with trolley. The police officer, Jafrabad registered the offence against the driver in Police Station, Jafrabad.

3. On the basis of report of the informant, Crime No.200/2019 was registered against the accused under Section 379 of Indian Penal Code, 1860. I.O. investigated the crime and recorded the statement of witnesses, drew spot panchnama and arrested the accused. He filed the charge sheet against the accused for the above offence.

4. My Ld. Predecessor had framed the charge against the accused at Exhibit-09 for the offences punishable under Section 379 of Indian Penal Code, 1860. The contents of the charge was read over and explained to the accused in their vernacular. The accused pleaded not guilty and claimed to be tried. Statement of the accused under Section 313 (1) (b) of Cr.PC. came to be recorded at Exhibit-41 to which accused claims false implication.

5. The following points arose for my determination.

Sr. no	Points	Findings
1.	Does the prosecution prove that on 23.10.2019 at about 12.30 p.m. at Jafrabad, Tq. Jafrabad & Dist. Jalna, the accused was carrying 1 brass sand without permit or royalty and thereby committed an offence punishable under Section 379 of Indian Penal Code Penal Code, 1860 ?	 Negative
2.	What order ?	Accused is acquitted.

REASONS

6. The case of prosecution is based upon direct evidence and the theft of unauthorized excavation of sand without permit and further carrying one brass sand in vehicle having Registration No. MH-28-D-7075 without legal permit.

As to point Nos. 1 to 4:

7. The prosecution has examined PW-1 Sham Jagannath Vaidya At Exh.16 who is the seizure panch witness, has not supported the prosecution and turned hostile.

8. The prosecution has examined PW-2 Pralhadappa Folane At Exh.20 who is the witness of the incident and denied his statement recorded by the police, has not supported the prosecution and turned hostile.

9. The prosecution has examined PW-3 Pradip Dnyandev Sarade at Exh. 25, who is the informant and deposed that while he was posted in Police Station, Jafrabad. On 23.10.2019 he received confidential information regarding theft of sand. Therefore, he proceeded to the spot at Harpala to Jafrabad Road along with police constable Khillare. They stopped the tractor loaded with sand. The driver of the tractor ran away. Therefore, the tractor was seized and brought to Police Station, Jafrabad. He accordingly lodged complaint of the incident. He identified the report and his signature at Exh.27 as true and correct. He identified the signature on the seizure panchnama at Exh.26.

10. In the cross-examination, PW-3 admits that, he did not received any written order for trap from the superior officer. He stated that the tractor and trolley was having same registration number.

11. The prosecution has examined PW-4 Surendra Chandrabhan Khillare at Exh. 28, who is the team member present with the informant at the time of incident. He deposed that while he was posted in Police Station, Jafrabad on 23.10.2019, he along with police constable Sarade proceeded to the spot at Harpala to Jafrabad Road. They stopped the suspicious tractor loaded with sand

12. In the cross-examination, PW-4 admits that, he was not Incharge of the Jafrabad Beet at the time of incident. He stated that the tractor and trolley was having same registration number.

13. The prosecution has examined PW-5 Najir Khan Pathan At Exh.34 who is the spot panch witness, has not supported the prosecution and turned hostile.

14. Lastly, the prosecution has examined PW-6, Ishwar Bhalchandra Deshpande at Exh.36, who is the Investigating Officer. He stated that on 23.10.2019, Crime No. 200/2019 was registered and tractor and trolley was seized in the premises of Police Station, Jafrabad. He Identified the signature on the seizure panchnama at Exh. 26. He further deposed that the spot panchnama was drawn by him at Repala Chowk at Jafrabad to Warud road in presence of two panch witnesses. He identified his signa-

ture at Exh. 37. He recorded statement of witnesses. Thereafter, he arrested the accused person and filed charge-sheet.

15. In the cross-examination, he admits that, he did record the statement of witness from the spot.

16. The prosecution has relied upon the evidence of police officer. It is settled law that the testimony of a police officer cannot be discarded merely on the ground of his official status. The offence in question is pertaining to the alleged sand theft or illegal excavation of sand. The investigating officer has not explained in his cross-examination as to no investigation was conducted to ascertain the source from where the sand was allegedly extracted or the destination to which it was being transported. The evidence reveals no effort was made to identify the spot from which the sand was removed or to collect evidence regarding its ownership or lawful possession. These omission goes at the root of the prosecution case.

17. It is further evident that no Revenue Officer or Mining Officer was associated with the seizure or investigation. Moreover, the complaint has also not being lodged by the competent revenue or mining authority. It is settled that for the prosecution of offences under Mines and Mineral (Development and Regulation) Act, 1957 can be instituted only upon complaint made by a person duly authorized by the Central Or the State Government. In the present case, the prosecution is lodged by the Police Officer and no revenue official has been examined.

18. However, the offence under Section 379 of the Indian Penal Code is concerned, the prosecution has failed to prove that the sand was dishonestly removed from the possession of any person without consent. In the absence of evidence regarding the source of the sand, ownership or possession, dishonest removal the ingredient of theft remains unproved.

19. Though, the panch witnesses have turned hostile, does not rendered entire prosecution case liable to be rejected. However, the material circumstances have not supported the prosecution on material particulars. In the present case, the seizure panchnama and the alleged recovery of sand is not proved. In the absence of any other reliable independent evidence corroborating the police witnesses, the available evidence creates doubt on the prosecution case.

20. Except the interested testimony of the police witnesses, which remain uncorroborated on material particulars, there is no admissible evidence to establish guilt of the accused. The hostile panch witness material omission in investigation and failure to comply with the statutory requirement under Section 22 of Mines and Mineral Act creates serious doubt regarding the prosecution case. Accordingly, this Court hold that the prosecution has failed to prove the offence charged against the accused beyond reasonable doubt. Therefore, the accused is entitled to the benefit of doubt. Hence, point no 1 is answered in the negative and in answered point no. 2 pass following order:

ORDER

1.	Accused is acquitted of the offence punishable under Section 379 of Indian Penal Code, 1860 vide Section 248(1) of the Criminal Procedure Code, 1973.
2.	The bail bonds of accused stand cancelled.
3.	The accused to comply provision under Section 437-A of Code of Criminal procedure, 1973.
4.	Seized muddemal one tractor and trolley is already handed over by interim custody, is confirmed.

(Judgment dictated and pronounced in open court)

Dt. 08/07/2026

[A.N.Khatade]
Judicial Magistrate First Class,
Jafrabad.

Part 'C'
LIST OF WITNESSES

A. Prosecution:

Rank	Name	Nature of Evidence
PW-1	Sham Jagannath Vaidya (Exhibit- 16)	Panch witness
PW-2	Pralhad Appa Folane (Exhibit- 20)	Panch witness
PW-3	Pradip Dyandev Sarade (Exhibit- 25)	witness
PW-4	SurendraChandrabhan Khillare(Exhibit- 28)	Police witness
PW-5	Najir Khan Shabbir Khan Pathan (Exhibit- 28)	Police witness
PW-6	Ishwar Bhalchandra Deshpande(Exhibit- 36)	I.O.

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
DW1	Nil	Nil

C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
CW1	Nil	Nil

LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
3	PW 1 / Exhibit- 16 & 26	Signature of seizure panch witness
1	PW 3 / Exhibit- 27	Report
2	PW 5 / Exhibit- 37	Spot Panch
3	PW 6 / Exhibit- 38	Arrest Panchnama

B. Defence :

Sr. No.	Exhibit Number	Description
1	NIL	NIL

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1	NIL	NIL

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	NIL	NIL

CERTIFICATE

Affirm that the contents of this PDF file are word to word as per original judgment.

Date 08/07/2026

Sd/-
(R. R. Misal)
Stenographer.