

CNR No.MHMM240000602008



Presented on : 05/02/2008
Registered on : 05/02/2008
Decided on : 11/06/2026
Duration : Y M D
18 04 06

IN COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,
35TH COURT, C. S. M. T., MUMBAI.

(PRESIDED OVER BY M.S.BUDHWANT)
Criminal Case No.57/PW/2008 Exh. 28
(CNR No.MHMM240000602008)

	Crime No.238/2007
	Dadar Railway Police Station
COMPLAINANT	State Through Sagar Asaram Aadhav
REPRESENTED BY	Ld. Shri. D.M. Patil learned PP for State
ACCUSED	Mobin Hasmatali Shaikh Age: 23 years, R/at – Subhashwadi, Bandra Pada, Manoranjan Center, Room No.678, Ambernath, Dist. Thane.
REPRESENTED BY	Ld. Advocate Shri. J.B. Patil and Smt. Smita Pawar for the accused
Date of offence	23.11.2007
Date of complaint	23.11.2007
Date of filing of chargesheet	05.02.2008
Date of charge framed	02.09.2024

Date of commencement of 11.03.2025
evidence

Date on which case reserved 11.06.2026
for Judgment

Date of the Judgment 11.06.2026

Date of the Sentencing Order ----

ACCUSED DETAILS

Rank of accused	Name of the accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during trial for purpose of Section 468 of BNSS.
Mobin Hasmatali Shaikh		03.12.2007	10.12.2007	Section 379 of IPC.	Accused is acquitted	As per final order	---

JUDGMENT

(Delivered on this 11th day of June, 2026)

The accused is facing trial for having committed an offence punishable under section 379 of the Indian Penal Code (hereinafter referred to as the “IPC” for brevity).

2] Brief facts of the prosecution case are that on

23.11.2007, the informant lodged the report at Dadar railway police station, Mumbai, alleging that on that day at about 20.00 hours, he was at platform no.4 of Dadar railway station. He was boarding in Down Karjat fast local train in the first-class compartment at that time, one unknown person taking advantage of the crowd, removed black colour wallet from the backside pocket of his pant. Cash of Rs.3,500/-, ATM card kept in his wallet stolen by the accused. Therefore, he lodged a report.

3] Accordingly, crime bearing No.238/2007 was registered for the offence punishable under section 379 of I.P.C. in Dadar railway police station. A.D. Suryawanshi, Head Constable Buckle No.2361, Crime Branch Railway, Mumbai investigated the crime. He arrested the accused, prepared a personal search panchanama, memorandum statement, recovery panchanama, recorded the statement of witnesses and after completion of investigation, filed a charge sheet against the accused.

4] My Ld. Predecessor framed Charge (Exh.05) of the accused on 02/09/2024 for the offence punishable under Section 379 of I.P.C. He pleaded not guilty and claimed to be tried.

5] After completion of prosecution witnesses, the statement of the accused (Exh.26) under Section 313 of the Code of Criminal Procedure has been recorded. His defence is that of total denial and false implication.

6] After perusal of the prosecution case and evidence, the

following points have arisen for my determination, and I recorded my findings along with reasons thereon as under:-

Sr. No.	<u>POINTS</u>	<u>FINDINGS</u>
1)	Does prosecution prove that the accused committed theft of the one black colour wallet containing cash of Rs.3,500/-, PAN card, ATM card of HDFC Bank, private bus ticket and other documents of informant and thereby committed the offence of 379 of IPC?	Negative.
2)	What order?	The accused is acquitted.

REASONS

AS TO POINT NO. 1 and 2:-

7] In order to bring home the guilt of the accused, the prosecution examined in all three witnesses i.e. Police Station Officer Limba Sakham Madake (PW-1) at Exh.12, Police witness Pandurang Vithoba Pawar (PW-2) at Exh.17 and Investigating Officer Ashok Dadu Suryawanshi (P.W.3) at Exh.21.

8] The accused is facing trial for the offence punishable under section 379 of the IPC, and therefore, it is necessary to see the ingredients of said offence. Which are as follows:

- i) dishonest intention to take property,
- ii) the property must be movable,
- iii) it should be taken out of the possession of the another person,
- iv) it should be taken without the consent of that person and

v) there must be some moving of the property in order to accomplish the taking of it.

9] The learned APP for the prosecution argued that the prosecution has proved the guilt of the accused through the witnesses beyond reasonable doubt. The prosecution has duly proved the First Information Report (Exh. P-1/13), disclosure statement of the accused (Exh. P-3/22) and recovery panchanama (Exh. P-3/23). Lastly, he submitted that the accused be convicted. Ld. Advocate for the accused vehemently argued that the prosecution has not examined the informant and therefore, contents of the First Information Report are not duly proved. The prosecution has examined the Investigating Officer to prove the disclosure statement and recovery panchanama of the stolen property. However, the prosecution has not examined the panch witnesses. Therefore, the disclosure statement of the accused and recovery panchanama are not duly proved. Lastly, she argued that the accused be acquitted for the charge levelled against him for want of sufficient evidence.

10] In this case, there is a burden on the prosecution to prove the essential ingredients of section 379 of IPC against the accused beyond reasonable doubt. In order to prove the guilt of an accused U/s.379 of IPC, the following witnesses deposed as under.

11] Limba Madake (PW.1) deposed that on 23.11.2007 when he was posted as PSO at Dadar Railway police station, one

informant namely Adhav came for filing complaint of theft of money from his purse. The informant told him that when he was boarding the train at Dadar railway station, his purse containing five currency notes of Rs.500/- and five currency notes of Rs.100/- and some important documents were stolen. He reduced the First Information Report in writing and registered the FIR at Exh. P-1/13.

12] During his cross-examination, he admitted that he does not remember the full name of the informant, he cannot tell exactly what type of documents were in the pocket, and also, he cannot tell the exact type of documents which are mentioned in the FIR. The informant lodged the complaint against an unknown person.

13] After perusal of the evidence of Limba Madake (PW.1), it is crystal clear that he is a PSO who reduced into writing the First Information Report at Exh. P-1/13 given by the informant. In this case, the informant, namely Sagar Aadhav, is an important witness to prove the contents of the FIR at Exh. P-1/13. However, the prosecution failed to examine the informant. The evidence of PSO Madke (PW.1) is not corroborated by the Informant. Therefore, due to lack of evidence, the prosecution miserably failed to prove the contents in the First Information Report that informant's wallet containing Rs.3,500/- was stolen. PSO, Madake (PW.1) deposed some contents in the First Information Report. However, it reveals

from his cross-examination that he has no personal knowledge about the incident nor he knows which things of informant went stolen. Therefore, his evidence is not helpful to the prosecution to prove the guilt of the accused as alleged.

14] Pandurang Pawar (PW.2) who is ASI at Crime Branch Railway, Dadar and he deposed that on 28.11.2007 as per secret information received from an informer he, along with his staff, went to Banderpada, Subhashwadi, Ambernath. At that place, they found Salim Khan, Mobin Hasmat and Santosh Yashwant Pawar. They took them into custody and brought them to Dadar Crime Branch. On suspicion, they arrested the accused at 5.00 a.m. in crime No.235/2007 vide arrest report (Exh.P-1/18). In the cross-examination, he admitted that when the accused persons were arrested, nothing was recovered from them in relation to this crime and he arrested the accused on the ground of suspicion. These admissions are very important to show that he arrested the accused on suspicion. Thus, his evidence is not helpful for the prosecution to prove that the accused committed theft of the informant's pocket.

15] ASI Suryawanshi (PW.3), who is the Investigating Officer, has deposed that on 03.12.2007 he arrested the accused who is in custody of crime No.238/2007 U/s. 379 of IPC. During investigation, the accused disclosed before panchas that prior to 10 to 12 days he stole one pocket from the pant of one passenger who

was boarding in Karjat Local train at Dadar railway station. In the said pocket there were Rs.3,500/-, an ATM card, an identity card and an identity card of a Bar Counsel Advocate. He threw away the ATM card and the identity card of Bar Counsel on the railway track. He expended Rs.1,000/- and the remaining cash of Rs.2,500/- was kept in his house out of Rs.3,500./- and is ready to give that amount of Rs.2,500/-. He reduced said disclosure statement of the accused before panchas at Exh.P-3/22. He further deposed that as per the instructions of the accused, he himself, panchas and staff went to the western side of Ambernath by train and then went towards Wandrepada, Subhash Nagar, Ambernath by private vehicle. Further, he deposed that after alighting from the vehicle they proceeded towards the accused's house as per his direction. One old-aged woman came out of the house. The accused told that she is her mother. They entered into the house. The accused took out cash Rs.2,500/- from the Godrej cupboard in front of panchas and staff and gave that amount to him. He prepared seizure panchanama at Exh. P-3/23. He handed over that amount of Rs.2,500/- to the muddemal clerk, and he gave receipt at Exh. P-3/25.

16] The prosecution's entire case is based on the evidence of the Investigating Officer regarding recovery of stolen property of Rs. 2,500/-, and his entire evidence is relied on the disclosure statement of the accused at Exh.P-3/22 and recovery panchanama at Exh.P-3/23. As per the FIR at Exh.P-1/13, the informant lodged

it against an unknown person. It shows that the prosecution case is solely dependent on the circumstantial evidence under section 27 of the Indian Evidence Act.

17] Section 27 of the Evidence Act provides that when any fact is discovered as to be discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much all such information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved.

18] This section is founded on the principle that if the confession of the accused is supported by the discovery of fact it may be presumed to be true and not to have been extracted. Section 27 of the Evidence Act is an exception to sections 24 to 26 of the Evidence Act. The object of this section is to admit evidence which is relevant to the matter under inquiry, namely, the guilt of the accused, and not to admit evidence which is not relevant to the matter. The provisions of section 27 of the Evidence Act are based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and consequently the said information can safely be allowed to be given in evidence because such an information is further fortified and confirmed by the discovery of an article or instrument of the crime.

19] The privy council in the case of Pulukuri Kottaya v. Emperor AIR 1947 PC 67 observed that -

“It is fallacious to treat the “fact discovered” in this section as equivalent to the object produced: the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to the past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that “I will produce a knife concealed in the roof of my house” does not lead to the discovery of a knife. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge; and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added “with which I stabbed A”, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”

20] It has been further observed that, *“there must be most of the fact discovered and the fact must be discovered in consequence of some information received from an accused person. This section lays down further qualification with the whole of the statement made by the accused in consequence of which the fact is discovered is not admissible. Only so much of the statement is admissible as relates distinctly to the fact discovered.”*

21] Keeping in mind these propositions of law, the testimony of prosecution witness i.e. Investigating officer, needs to be assessed. Investigating officer only deposed that the accused gave a disclosure statement at Exh.P-3/22 and, in consequence thereof, recovery of the amount of Rs.2,500/- as per seizure panchanama at Exh. P-3/23 has been done. However, the prosecution has not examined independent panch witnesses to prove the contents of the disclosure statement and seizure panchanama. The investigating officer himself conducted the recovery panchanama. The evidence of the investigating officer is required to be corroborated by the independent panch witnesses. However, the prosecution has not examined them; therefore, the evidence of the investigating officer, without the corroboration of independent panch witnesses, does not appear to be trustworthy.

22] Moreover, after close scrutiny of the evidence of the investigating officer, he deposed that when they went to the house of the accused, he entered into the house and there was one Godrej cupboard and the accused took out Rs.2,500/-from the cupboard. As per the recovery panchanama at Exh.P-3/23, it is mentioned that the accused entered into the house and opened the cupboard and took an amount of Rs.2,500/- from the inside compartment of the cupboard and gave it to the Investigating Officer in front of panchas. However, the investigating officer failed to depose from which part of the cupboard the accused took out the cash amount. As per evidence of Investigating officer the

accused gave stolen property from his house but Investigating Officer has not recorded the statement of accused's mother even though she was present nor he collected documents which shows that the said house belongs to accused. Thus, it creates doubt about the testimony of the Investigating Officer that, as per the disclosure statement of the accused, the Rs. 2,500/- was recovered from the house of accused.

23] As per the First Information Report at Exh.P-1/13 Rs.3,500/- was stolen by an unknown person. However, the informant did not mention the denominations i.e. the serial number of currency notes, in the FIR. In the seizure panchanama, the investigating officer did not mention the serial numbers of currency notes which were recovered from the house of the accused. The recovered muddemal ie. cash amount of Rs.2,500/- was also not produced at the time of evidence and not shown to the witness by the prosecution. It is important to mention here that in general every person can have Rs.2,500/- in his house. Therefore, for want of evidence of the serial numbers of currency notes in the panchanama, it creates doubt on the evidence of the investigating officer that he seized the said currency notes which were stolen by the accused from the pocket of the informant.

24] The prosecution's case depends upon circumstantial evidence. Therefore, it is the bounden duty of the prosecution to prove that the accused discloses the stolen property of Rs.2,500/-

was kept in his house and, as per said disclosure statement, the fact stolen property has been actually recovered. However, the testimony of investigating officer does not show the discovery of distinct information regarding stolen property. There is no corroboration of independent witness to the said investigating officer. Therefore, without any corroboration and evidence of panch witnesses, the recovery of property is not proved. Thus, it reveals that the prosecution failed to prove the circumstantial evidence regarding discovery of stolen property.

25] It is cardinal principle of criminal jurisprudence that prosecution has to prove its case beyond reasonable doubt by leading reliable, cogent and convincing evidence. There is strong presumption of innocence in favour of the accused and rebuttal of the same always lies upon the prosecution. Accused is entitled to benefit of every reasonable doubt in the prosecution story and any such doubt in the prosecution case entitles accused for acquittal.

26] Thus, considering the aforesaid evidence, for want of sufficient evidence, the prosecution miserably failed to prove beyond reasonable doubt that on 23.11.2007 the accused committed theft of pocket containing cash of Rs.3,500/-, pan card, ATM card of HDFC bank and other documents of the informant on platform No.4 in down Karjat fast local train in first class compartment. Therefore, for want of evidence and reasonable doubt the accused is entitled to be acquitted. Accordingly, I answer

point No.1 in the negative and in answer to point No. 2, I pass the following order:-

ORDER

1. Accused Mobin Hasmatali Shaikh is acquitted of the offence punishable under section 379 of the Indian Penal Code vide section 248(1) of the Code of Criminal Procedure.
2. Bail bonds of the accused stand cancelled.
3. Seized cash of Rs.2,500/- be returned to the informant after appeal period is over.
4. Accused shall execute his Personal Bond and Surety Bond of Rs.15,000/- as per Section 437-A of the Code of Criminal Procedure for a period of six months.
(Dictated and pronounced judgment in open Court.)

(M.S.Budhwant)
Judicial Magistrate First Class
35th Court, C.S.M.T., Mumbai.

Date : 11/06/2026.
Svr/-

Direct dictated on computer : 11/06/2026.

Checked on: 11/06/2026

Signed on : 11/06/2026