

MHPU190040352016

**RCC. No. 162/2016**(GRP Daund Vs. Caiper
Babaurao Balskar)**ORDER BELOW EXH. 1**

The case is pending since long. Accused was absconded. Despite issuance of non-bailable warrant and proclamation under section 82 of the Criminal Procedure Code, 1973 (Hereinafter referred to 'the Cr.P.C.'), prosecution failed to secure presence of accused. Hence, summons were issued to witnesses for recording evidence under section 299 of the Cr.P.C.

2. As per record, charge-sheet is filed against accused for the offence punishable under Section 379 of the Indian Penal Code, 1860. Aakash Chandrakant Palase (P.W.1), Rajkumar Chapalal Bafana (P.W.2) and Nilesh Dnyandev Janrao (P.W.3) are examined under Section 299 of the Cr.P.C.

3. P.W. 1 Aakash Chandrakant Palase is examined as per Section 299 of the Cr.P.C. He is the owner of Chandrakant Hotel. He deposed that on 18.10.2016 a unknown person came to Chandrakant Hotel for breakfast, he has not having money to pay the charges of breakfast. Hence, he kept mobile phone as security till the payment of charges of breakfast. He further testified that he does not acquainted name of said person. He further revealed from his testimony that he could not identify the said customer i.e. accused. It is further came from his evidence that said unknown person had told that at night he will give money of breakfast and taken back mobile phone. Inspite that said person had not came to

hotel. It is further testified that on the next day, police came to his hotel and told that mobile is stolen mobile. Police has seized the said mobile phone from his custody.

4. P.W. 2 Rajkumar Champalal Bafana is examined as per Section 299 of the Cr.P.C. who is police witness. It is seen from his evidence that he wrote the complaint as per informant and registered the crime accordingly.

5. It transpires from seizure panchanama dtd. 20.10.2016, Samsung company's Galaxy J-7 golden colour mobile seized from accused in presence of PW 3 Nilesh and another panch witness Ashish Walmiki. It transpires from arrest panchanama dtd. 20.10.2016, accused was arrested in presence of PW 3 Nilesh and another panch witness Ashish Walmiki. It further transpires memorandum panchanama dtd. 21.10.2016, accused admitted he has committed theft of black chocolate sack bag containing two phone and cloths. Out of two mobile phone one Samsung mobile is seized from the possession of accused as per seizure panchanama dtd. 20.10.2016. Another Intex company's mobile seized from PW - 3 Nilesh as per the memorandum of the accused. However, P.W. 3 Nilesh Dnyandev Janrao is panch witness on seizure panchanma, arrest panchanama as well as memorandum-cum seizure panchanama of Intex mobile phone who resiled from earlier statement and did not support to the case of prosecution. Hence, seizure panchanma, arrest panchanama as well as memorandum-cum seizure panchanama of Intex mobile phone are not proved according to legal principles of the Evidence Act.

6. In spite number of witness summons issued to informant

Viz. Shivam Bhimsen Varma, but as per report he could not find on given address. It is pertinent to note that report dated 20.10.2016 is filed against unknown person who has committed theft of sack back containing Samsung Galaxy J5 golden colored mobile phone and Intex Aqua Star 2 white colored mobile phone. In spite of report dated 20.10.2016 for sake of discussion taken as it is, then also, nothing is incriminating against accused. Number of times summons were issued to the informant, but could not served as informant left the address. From the evidence of prosecution witnesses, it reveals that they could not identify the accused. Therefore, no inference can be drawn against the accused. P.W.2 Bafana is the police witness and his evidence is in formal in nature. It pertinent to note that Intex company's mobile not seized from the custody of accused. However, said mobile is seized from the custody of P.W.1 Aakash. To whom investigating officer had not arrayed as an accused in the present crime as stolen Intex mobile was seized from his custody. Furthermore, it can be seen that, despite issuance of summons from time to time, prosecution failed to secure presence of other witnesses. As per the police report, some of the other witnesses dead, and others have left their addresses. As other witnesses are not traceable and case is approximately 10 years old. First information report is filed against unknown person. Stolen mobile article-A is already seized from the custody of the witness. Furthermore, the learned A.P.P. for the State has filed evidence close pursis at Exh. 23. Therefore, I am of the considered view that, no prospect will be served by keeping this case pending further. There is no incriminating evidence came on record through the evidence of witnesses.

6. Heard Ld. A.P.P. Smt. P.D. Shinde for State.

7. Considering the police report (i.e. Charge-sheet) and documents enclosed with it under Section 173 of the Cr.P.C. and making examination of witness available, I do not find any material against accused. Thus, there is no fruitful purpose will be served by keeping present case pending furthermore. Therefore, accused is liable to be discharged under Section 239 of the Criminal Procedure Code, 1973 and proceeding is liable to be disposed off. Hence, following order is passed:

ORDER

- 1] Accused viz. Caiper @ Mahadev Babaurao Balskar is discharged under section 239 of the Criminal Procedure Code, 1973 of the offence punishable under Section 379 of the Indian Penal Code, 1860.
- 2] His arrest warrant be recalled. Inform to the concerned police station, accordingly.
- 3] In view of Section 452 of the Criminal Procedure Code, 1973 the interim custody of the seized muddemal i.e. Samsung company's Galaxy J/5 golden colored mobile IMEI No. 352672077021996 and Intex Acqua Star 2 white colored mobile IMEI No. 911430508527428 were already handed over to the informant. Hence, the custody of seized mobile phones are confirmed to informant after appeal period is over.
- 4] Proceeding is disposed off.

Place : Daund.
Dated: 10.07.2026.

(Sunil S. Dahatonde)
Judicial Magistrate First Class,
Railway Court, Daund, Dist. Pune.