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|-----------------------------------------------------------------------------------|---------------------------|
| MHST190064322023                                                                  | Presented on: 28-02-2019  |
|  | Registered on: 28-02-2019 |
|                                                                                   | Decided on : 07-07-2026   |
|                                                                                   | Duration: Ys. Ms. Ds.     |
|                                                                                   | 07 04 09                  |

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE AT WAI**  
(Presided over by B. D. Kadam)

**Criminal Appeal No. 92/2023**  
(Old Crim. Appeal No. 16/2019)

**Exh.No. 11**

**Sagar Arun Kumbhar**  
Age 26 yrs., occu. Driver  
R/o. Rawadi Khurd,  
Tal.Phaltan, Dist.Satara.



**APPELLANT**

***..Versus..***

**The State of Maharashtra**



**.. RESPONDENT**

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**Appearances:**

Shri N.N.Jadhav, Advocate for Appellant.

Shri D.S.Patil, Addl. Public Prosecutor for Respondent/State.

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**Appeal against the Judgment & Order passed by the J.M.F.C.,  
Khandala in R.C.C.No.15/2015 dated 06.02.2019.**

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**J U D G M E N T**

(Delivered on : 07.07.2026)

By this appeal, appellant has challenged the judgment and order passed by Ld. Judicial Magistrate First Class, Khandala in Regular Criminal Case No.15/2015 dated 06.02.2019 convicting and sentencing him to suffer R.I. for three years and fine of Rs.10,000/- for the offence punishable under Section 379 of the Indian Penal Code.

2] It is submitted that, R.C.C.No.15/2015 was filed against the present appellant. After recording the evidence of all prosecution witnesses, Ld.J.M.F.C. delivered the judgment on 06.02.2019, by which he has convicted the appellant for the offence punishable under Section 379 of the I.P.C. and sentenced him to suffer R.I. for three years and pay a fine of Rs.10,000/-. In fact, the judgment and order is improper, illegal and against the provisions of law. It is perverse and wrong in the eyes of law. Ld. Lower Court has not scrutinized the evidence minutely in a judicious manner. Ld. Magistrate has not considered that the seizure of the property is not proved. Lastly, appellant prayed to set aside the conviction and prayed for liberty. Hence, this appeal.

3] Ld. APP submitted that Trial Court has rightly convicted the accused by observing the evidence of the prosecution witnesses. According to APP, two witnesses are the public servants and they are working as Village Talathi and no reason to them to depose falsely

against the present appellant. They are independent witnesses and categorically stated that accused found in possession the Truck, by which he was carrying the sand without any valid permit. He had neither paid royalty nor given satisfactory explanation regarding the property found in his possession. Prosecution has proved the offence beyond reasonable doubt and that's why, Ld.Magistrate has rightly convicted the accused. Judgment is correct as per the provisions of law and therefore, Ld.APP prayed for dismissal of the appeal.

4] Considering the rival submissions, following points arise for my determination and my findings recorded thereon are as under :

| Sr.<br>No. | POINTS                                                                                                                                                                                  | FINDINGS             |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1.         | Whether prosecution proved that the accused/appellant has intentionally and dishonestly taken the sand in the Truck bearing No. MH-12-EQ-4731 without consent of Government Authority ? | No.                  |
| 2.         | Is it necessary to interfere in the order of the Ld. Magistrate ?                                                                                                                       | Yes.                 |
| 3.         | What order ?                                                                                                                                                                            | : Appeal is allowed. |

### REASONS

#### **AS TO POINT NOS.1 TO 3 :**

5] First of all, I would like to make it clear that, this is the offence punishable under Section 379 of the I.P.C. i.e. the offence of

theft. In such cases, seizure of stolen property must be proved beyond all reasonable doubts. Therefore, it is for me to scrutinize the evidence and find out the truth regarding the seizure of stolen property.

6] Prosecution examined PW1 Sanjay Mane as a panch of seizure of stolen property i.e. sand loaded in the Truck. But he did not support the prosecution case and therefore, declared as hostile. In his cross-examination, nothing was brought out favourable to the prosecution. Prosecution has not examined the second panch of seizure panchanama. The seizure must be proved through evidence of panchas and in case, panch witnesses turned hostile, then it should be proved through I.O. In the present case, PW1 Sanjay is examined as panch of seizure of stolen muddemal. He has not supported the prosecution case. Second panch is not examined. Therefore, the evidence of I.O needs to be scrutinized. Prosecution examined PW5 API Borate as a I.O. She has stated that, on 15.01.2015, investigation of crime No.10/2015 was entrusted to her. She has stated that, she recorded the statements of witnesses, prepared receipt of muddemal and submitted the charge-sheet. Except this, she has not stated anything regarding the seizure. Even, she has not stated that, she prepared seizure panchanama of Truck loaded with sand. Therefore, it is uncertain, which truck was seized ? What was its registration number? What was its description e.g. colour etc ? and what was loaded therein ? In absence of said evidence, it cannot concluded that the sand was loaded in the truck found in the possession of appellant. Once the seizure is not proved, then it cannot be

concluded that the accused has stolen sand without the consent of Government and was carrying by his truck. As such, seizure is not at all proved. Therefore, the conviction which is ordered by Ld. J.M.F.C. is useless and needs to be set aside. Hence, Point No.1 is answered in negative and I come to the conclusion that, there is need of interference in the order of Ld. J.M.F.C. In answer to Point No.3, following order is passed.

**ORDER**

1. Appeal is allowed and conviction and sentence passed by Ld. J.M.F.C., Khandala in R.C.C.No. 15/2015 dated 06.02.2019 is set aside and appellant/accused Sagar Arun Kumbhar is acquitted of the offence punishable under Section 379 of the Indian Penal Code.
2. Fine amount of Rs.10,000/- deposited by appellant be returned to him.
3. Bail bond of appellant is cancelled.
4. The seized muddemal i.e. Truck bearing registration No. MH-12-EQ-4731 is temporarily given to its owner and his custody is confirmed and he shall retain its possession.  
(Dictated and pronounced in open Court.