

MHMM190005752013



Received on :- 07/01/2013
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Decided on :- 26/11/2022
Duration :- 09 Y. 10 M. 19 D.

Exh. :-

**IN THE COURT OF THE METROPOLITAN MAGISTRATE,
RAILWAY MOBILE COURT, ANDHERI, MUMBAI.
(PRESIDED OVER BY NILESH V. BANSAL)
(JUDGMENT U/SEC. 355 OF CODE OF CRIMINAL PROCEDURE)**

- (a) The serial No. of the case; : 37/PW/2013
- (b) The date of commission of the offence; : 14/12/2012
- (c) The name of the complainant (if any); : The State (Andheri Railway Police Station in C. R. No. 82/2012).
- (d) The name of the accused person and her parentage and residence; : Rinki Ganesh Singh,
Age :- 30 Years, Occ. : Housewife,
R/o. Mata Prasad Chawl, Room
No. 15, Ram Mandir Road,
Jogeshwari (East), Mumbai
- (e) The offence complained of or proved ; : Under Section 379 of the Indian Penal Code.
- (f) The plea of the accused and her examination (if any); : The accused not pleaded guilty.
- (g) The final order; : The accused is acquitted.
- (h) The date of such order; : 26/11/2022

Mr. Samrat Patil, APP for the State.
Mr. O. P. Singh, Advocate for the accused.

J U D G M E N T
(Delivered on 26/11/2022)

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

2. In brief, it is the case of the prosecution that on 04/12/2012 F.I.R. was lodged at police station Andheri Railway that at about 17.45 hours when the informant Divya Mohd. Waliya was boarding in first class coach in Virar slow train at platform no.2 of Andheri Railway station, one lady committed theft of her mobile by opening her sag-bag. The informant shouts 'chor chor' loudly. She caught hold of her hand and thereafter handed over said lady to woman police constable. They took the informant and that lady to police station. The police took personal search of that lady in presence of two lady panch witnesses. One mobile handset of Samsung company was found during personal search of that lady. The said mobile handset was of the informant. Hence this F.I.R.

3. On the basis of the report given by the informant, crime no. 82/2012 came to be registered against the accused. During personal search of the accused, I.O. seized mobile handset of the informant from the possession of the accused. Therefore, he arrested the accused. During further investigation I.O. recorded statement of witnesses. After completion of investigation, I.O. filed charge-sheet.

4. My learned predecessor framed charge (Exh.P-2) against the accused for the above mentioned offence. The accused pleaded not guilty and claimed to be tried. The prosecution has examined two witnesses. The statement of the accused under Section 313 of the Code of Criminal Procedure came to be recorded at Exh.07. The defence of the accused is that of total denial.

5. The points for determination alongwith my findings thereon as under :-

POINTS

FINDINGS

1] Does the prosecution prove that the accused committed theft of mobile handset of Samsung Company worth of Rs. 11,500/- out of the possession of the informant ?

No

2] What order ?

The accused is acquitted.

REASONS

AS TO POINT NO. 1 :-

6. The case is more than 09 years old. Despite of summons of informant her presence cannot be secured as per police reports of 08/05/2019, 05/10/2019, 06/11/2015, 07/01/2020 and 10/02/2020. Thereafter my predecessor has passed order on Exh.1 and proceeded the case as per available evidence. The prosecution has examined only two witnesses. WPN Vaishali Gurav (P.W.1) and I.O. Ashok Mane (P.W.2) at Exh.3 and 5. WPN Vaishali

Gurav (P.W.1) deposed that on 04/12/2012 at about 17.45 hours he heard shouts at platform no.2 'Chor Chor' and she has caught accused red handed. On personal search it was found that accused was possessing one mobile handset of Samsung company. Accordingly, recovery panchanama (Exh.4) and (Exh.6) were prepared. On perusing the evidence on record it is sent that prosecution has not examined informant. Moreover, recovery panchas are not examined by the prosecution. Perusing the evidence on record case cannot be proved only upon police witnesses who can turn as interested witness. The prosecution failed to prove the charge levelled against the accused. Hence, I answer point no. 1 in the negative.

AS TO POINT NO. 2:

7. The prosecution failed to prove guilt of the accused. Therefore, the accused is liable to be acquitted. Seized mobile handset of Samsung company of the informant will have to be ordered to be returned to the informant. In the result, in answer to point no. 2, I pass the following order.

ORDER

- 1 The accused 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 stands cancelled and she be set at liberty.
- 3 After appeal period, seized mobile handset of Samsung company of the informant be given to the informant.

- 4 The accused to execute P. R. Bond of Rs.15,000/- with one solvent surety vide Section 437 – A of the Code of Criminal Procedure for appearance before the higher court, if said court issues notice to him for his appearance in the matter in which present judgment is challenged, if any.

Place :- Mumbai.

Date :- 26/11/2022.

(Nilesh V. Bansal)

Metropolitan Magistrate,
Railway Mobile Court, Andheri, Mumbai.

Dictated On :- 26/11/2022

Transcribed On :- 26/11/2022

Checked and Signed On :- 26/11/2022