



IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLREV No.926 of 2009

Nilu @ Nilesh Kumar Jain **Petitioner**
Mr. D.P. Dhal, Senior Advocate

-Versus-

State of Orissa **Opposite Party**
Mr. S. Swain, AGA

CORAM:

JUSTICE R.K. PATTANAİK

DATE OF HEARING: 13.11.2025

DATE OF JUDGMENT: 23.02.2026

1. Instant Revision under Section 401 read with Section 397 Cr.P.C. is at the behest of the petitioner assailing the legality, correctness and judicial propriety of the impugned judgment dated 11th August, 2009 passed in connection with Criminal Appeal No.40/31 of 2005-2006 by the learned Additional Sessions Judge, Nuapada, whereby, the order of conviction and sentence directed against him in G.R. Case No.117/98 (T.R. No.575 of 1998) by the learned S.D.J.M., Nuapada for an offence under Section 379 IPC has been confirmed on the grounds inter alia that such decision is bad in law and hence, therefore, liable to be interfered with and set at naught in the interest of justice.

2. The prosecution story in brief is that the informant, a police constable, lodged a written report at the IPC alleging therein



that while he along with another constable named with a local Gramarakshi were engaged in guarding an accident vehicle bearing registration No.OR-H-5268 and a motor cycle at Mundapada, the petitioner and the accused driver forcibly removed it from their custody. Upon such a report lodged, Komna PS Case No.29 dated 15th May, 1998 was registered under Section 379 read with 34 IPC With the registration of the case, investigation was concluded and finally the chargesheet was filed against the petitioner and the driver accused of having removed the alleged truck from the police custody. In course of trial, the prosecution examined nine witnesses and proved as many as five documents in support of its case, whereas, the defence examined none, however, proved a copy of the judgment in G.R. Case No.103 of 1998 of the learned Chief Judicial Magistrate, Nuapada. Considering the evidence received from both the sides, learned S.D.J.M., Nuapada concluded that the accused driver is not found guilty for the alleged offence, hence, he was acquitted therefrom, whereas, held that the petitioner is responsible for removal of the truck in question from the accident spot without authority and therefore, convicted him for an offence of theft and sentenced him to undergo R.I. for 6 months with the pre-detention period, if any, undergone by him to be set off in terms of Section 428 Cr.P.C. Being aggrieved of the same, the petitioner preferred appeal before the learned court below, which was disposed of, confirming the order of conviction and sentence vis-à-vis the petitioner, hence, the revision is filed.



3. Heard Mr. Dhal, learned Senior Advocate appearing for the petitioner and Mr. Swain, learned AGA for the State.

4. According to the petitioner, the order of conviction and sentence imposed against him is without properly considering and appreciating the evidence on record. It is contended that the petitioner never removed the vehicle from the spot and regard being had to the material evidence with contradictions, a case of theft is not proved and established, but the learned courts below ignoring the same, directed conviction for an offence under Section 379 IPC. It is the claim of the petitioner that the accused driver has been let off from the charge levelled, whereas, he has been convicted on the same set of evidence, hence, the impugned judgment of the learned court below for having confirmed the conviction and sentence cannot be sustained in law. The further claim is that there is discrepancies in the date, time and place of lodging of the F.I.R. in juxtaposition to the seizure of alleged vehicle and its zimanama in favour of the petitioner which has been completely lost sight of by the learned court below. Under the above circumstances, it is pleaded that the impugned decision in appeal confirming the order of conviction and sentence directed by learned S.D.J.M., Nuapada deserves to be set aside, followed by an acquittal order.

5. Gone through the LCR.

6. The vehicle of the petitioner met with an accident and in that connection, it is alleged in the F.I.R. marked as Ext. 1 that the petitioner and the other accused removed the same from the



spot without the permission of the police. A constable on duty lodged the said report alleging such removal of the truck by the petitioner and the co-accused. It has been alleged that the vehicle after having met with an accident was detained at the spot for investigation, but without permission, it was removed by the accused persons and accordingly, on such a report received, Komna PS Case No.29/98 dated 15th May, 1998 was registered under Section 379 read with 34 IPC. On perusal of the record, the Court finds that the informant examined as P.W.1 categorically deposed that on 15th May, 1998, while he was on duty at Tarbod outpost, was assigned responsibility to guard the accident vehicles along with the constables, namely, Jugal Kishore Dhangada Majhi (P.W.8) and Sufal Mohanand (P.W.7). It is further deposed by him that soon after inspection of the vehicles at around 2 P.M. by the M.V.I., Kalahandi, necessary document was handed over by him to the O.I.C. Komna PS. As further deposed, in the meanwhile, the accused persons present the spot, took away the vehicle without their permission, hence, the F.I.R. was lodged. The command certificate of P.W.1 has been marked as Ext.3. The duty of P.W. 1 is clearly revealed from Ext.3. The testimony of P.W.1 was corroborated by P.W.7, according to whom, he along with others were guarding the accident vehicles and at that point of time, the petitioner and accused forcibly removed the truck despite their protest. On a consideration of the evidence of P.Ws.1, 7 and 8, who were found to be on duty to guard the accident vehicles at the spot, it is made to reveal that the truck had met with an accident involving a motor cycle and was illegally removed and it was without the consent of the police.



The presence of the P.Ws. 7 and 8 and the duty at the spot is also proved on record. The Court does not find any reason to disbelieve such evidence of P.Ws.1, 7 and 8. Promptly after the alleged incident and when the truck was removed by the petitioner, the report was lodged by P.W.1. There is no evidence on record to show that P.W.1 had any axe to grind against the petitioner and therefore, it has to be concluded that immediately after removal of the truck from the spot, the report was lodged by him. Such evidence of P.W.1 received corroboration from P.Ws.7 and 8. Even though the I.O. has not been examined for the reasons best known to the prosecution, the Court is of the view that the evidence of P.Ws.1, 7 and 8 support and corroborate each other. There is nothing on record to doubt the claim of the prosecution regarding removal of the vehicle from the spot. Even though the petitioner happens to be the owner of the alleged vehicle, in view of the evidence on record, it has to be held that such removal of it from the spot without authority amounts to an act of theft. Furthermore, there is evidence on record to show that the vehicle was seized by the police. The seizure list has been proved through other witnesses, namely, P.Ws.3 and 4. Considering the evidence in its entirety, the conclusion of the Court is that the presence of the petitioner at the spot is established and such illegal removal by him is duly reported by P.W.1 and proved him and others. As regards, the plea of the petitioner that there is discrepancy in the date of lodging of F.I.R. and that the zimanama was antedated and that makes the alleged incident to be false, the Court finds from the record that such zimanama has been executed a day after the incident. The alleged occurrence took



place on 15th May, 1998, whereas, the zimanama was prepared on 16th May, 1998. The claim of any such execution of zimanama in favour of the petitioner or someone on his behalf alleging it to be antedated does not receive confirmation from the record. Neither the petitioner examined himself nor the zimanama was marked as an exhibit. The Court further finds that the vehicle was left in zima of someone else and not the petitioner. When there is a report lodged for the alleged incident as per Annexure-1 and thereafter, seizure list has been prepared and on 16th May, 1998, the vehicle was left in the zima of someone who has not even been examined from the side of the defence, this Court does not find any reason to consider any such plea of the petitioner.

7. Admittedly, the accused driver was acquitted. A copy of the said judgment in G.R. Case No.103 of 1998 has been marked as Ext. A from the side of the defence. A plea has been advanced by Mr. Dhal, learned Senior Advocate for the petitioner that the accused driver was exonerated with an acquittal order for not being rash and negligent and that a part, the vehicle was seized and left in zima when the report had not been received at the PS, but as earlier discussed, such report was lodged on 15th May, 1998 and thereafter, the zimanama was executed and there is no discrepancy at all. In so far as the accused driver is concerned, even though his rashness and negligence could not be proved for offences under Sections 279 and 304(A) IPC after a trial, the order of acquittal in his favour in G.R. Case No.103 of 1998 is not to render any assistance to the petitioner, who is rather guilty of having



removed the vehicle from the spot. Both the incidents are distinct and separate and though related to the accident, but for the acquittal of the driver therein, the Court is of the view that the petitioner cannot plead exoneration.

8. An accident vehicle in the custody of the police, if removed even by its owner without their consent, such an act would be a theft and hence, punishable under law. It is to be held that theft is an offence against possession and not ownership. Once the police have taken the vehicle into their custody either by seizure or impounding at the spot itself, it is in legal possession of the police for investigation, though the owner still holds the title. What is more important is the conduct and the overt act committed with the requisite intention. A dishonest intention is to be looked at in such an incident irrespective of ownership of the vehicle. A Court should be concerned with *animus furandi* of the accused at the time of removal of the vehicle from the possession of the police. According to the Court, removing a vehicle without permission despite knowing it to be in legal custody demonstrates a dishonest intention to take the property out of possession of the police resulting in a wrongful loss to the State. In such a situation, the legal consequence would be a criminal charge for an offence of theft punishable under Section 379 IPC and even for obstructing a public servant in discharging official duty. In other words, the owner may also be charged with obstructing a public servant while on duty besides a criminal charge of theft. A proper procedure would have been for the petitioner to retrieve the vehicle from the



police custody with an application moved before the court concerned for receiving it in zima.

9. As it is made to understand from the evidence, the alleged accident took place on 15th May, 1998 and from the spot, the vehicle was removed, but thereafter, upon seizure, a zimanama was executed on 16th May, 1998. Apart from a case registered under Section 279 and 304(A) IPC, for such illegal act of removal, upon receiving a report from a Constable on duty, a case under Section 379 read with 34 IPC was registered. The Court considering the evidence on record and in view of the discussion as aforesaid reaches at an irresistible conclusion that the learned courts below did not err or commit any illegality in concluding that the petitioner to be responsible for the incident, even if, he is the owner of the vehicle. The Court is not inclined to distrust P.W.1, who lodged the report and other witnesses, namely P.Ws.7 and 8 present at the spot. The seizure of the vehicle is also proved by P.Ws.2 and 3. The duty of the Constables at the spot is established. Even though P.Ws.1 and other witnesses were cross-examined by the defence, nothing adverse could be elicited from them. It can be said that the defence completely failed to create any dent in the evidence of the prosecution. No rebuttal evidence was led by the petitioner except a copy of the judgment in G.R. Case No.103 of 1998 at Annexure-A. It is restated that any such acquittal order in respect of the driver of the vehicle either in the case at hand or in G.R. Case No.103 of 1998 is not to render any assistance to petitioner, who is guilty of an independent act of theft for having removed the vehicle from



the spot. So, in the ultimate view of the Court, the impugned judgment of the learned court below confirming the order of conviction does not suffer from any legal infirmity.

10. However, while maintaining the order of conviction, the Court is equally of the considered view that the petitioner, at this distant point of time, should not be directed to undergo the sentence instead should be let off with admonition in terms of Section 3 of the Probation of Offenders Act, 1958.

11. Accordingly, it is ordered.

12. With the above direction, the revision stands disposed of.

(R.K. Pattanaik)
Judge

Sumitra