

HIGH COURT OF MADHYA PRADESH : JABALPUR

Endt. No.....13/6196...../CRR 4367/18 Jabalpur, dt. 29/11/18
III-2-9)40-V-2(D)

The copy of Judgment passed by Hon'ble Shri Justice J.P. Gupta in CRR No. 4367/2018 in the case of Yogesh Vs. State of Madhya Pradesh dated 26-10-2018 is forwarded to:-

- (i) The District & Sessions Judges.....(all in the State) with a request to circulate the copy of the same to all the Judges working under your kind control for information & ready reference so that the culprits be not spared on account of the mistake of the Presiding Officers.
- (ii) The District & Sessions Judge (Inspection Vigilance), Jabalpur / Indore / Gwalior;
- (iii) The Director MPSJA for information & needful ,
- (iv) The Principal Registrar, Bench at Indore/Gwalior High Court of M.P., Jabalpur.
- (v) P.S. to Hon'ble the Chief Justice ,High Court of Madhya Pradesh Jabalpur for placing the matter before His Lordships,
- (vi) P.S. to Registrar General/ Principal Registrar(Judl)/ Principal Registrar (Inspection & Vigilance),/ Principal Registrar (Examination) / Principal Registrar (ILR) High court of Madhya Pradesh Jabalpur,
- (vii) Registrar(J-I),(J-II) /(D.E.)/(A)/ (Vig.)/ (VI.)/ High Court of Madhya Pradesh, Jabalpur.
- (ix) The Registrar(IT) for uploading the same on the Website of High Court of M.P.


(B.P. SHARMA)
REGISTRAR(DE)

SCANNED

Criminal Revision No. 4367/2018
(Yogesh vs State of Madhya Pradesh)

Jabalpur : 26/10/2018.

Shri Mithilesh Prasad Tripathi, Advocate for the applicant.

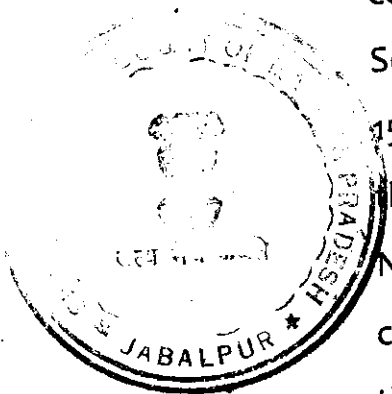
Shri C.K. Mishra, Government Advocate for the respondent

-State.

Heard on I.A. No. 15333/2018, which is an application for suspension of sentence and grant of bail filed on behalf of the applicant. However, during the course of arguments, learned counsel for the applicant submits that the revision may kindly be heard finally.

With the consent of learned counsel for both the parties, this revision petition is finally heard.

This revision petition has been filed by the applicant under Section 397/401 of the Cr.P.C. being aggrieved by the judgment of conviction and order of sentence dated 29.08.2018 passed by the Sessions Judge, Khandwa, District Khandwa in Criminal Appeal No. 153/2018 arising out of the judgment dated 29.05.2018 passed by the Chief Judicial Magistrate, Khandwa in Criminal Case No.2401016/2015, whereby the applicant was convicted for commission of offence punishable under Sections 380 and 457 of the Indian Penal Code and sentenced to RI for three years alongwith fine of Rs.500/- with default stipulation RI for one month, each offence. By the impugned judgment, learned appellate Court confirmed the conviction and reduced the sentence to RI for one year alongwith fine of Rs.500/- with default stipulation RI for one month, each offence.



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Relevant facts of the case in brief are that on 24.11.2014, complainant Jugal Kishore with his wife had gone to Aloka by putting lock in his house. On 03.12.2014, in the afternoon at about 1 O'clock, when he returned to the house, he found that the lock was broken and the ornaments kept in the almirah were found missing. Some papers and Rs.5000/- cash were also missing. He lodged FIR at Police Station Moghat Road, District Khandwa, where offence at Crime No.698/2014 was registered. The applicant and other co-accused persons were arrested. At the instance of the applicant one golden ear ring, which is alleged to be stolen property, was recovered and the applicant failed to explain the possession of the said golden ear ring. The ring was identified by the complainant to be stolen property during investigation. After investigation, charge-sheet was filed against the applicant and other co-accused persons. Learned trial Court convicted and sentenced the applicant as mentioned above. Thereafter, in appeal, learned appellate Court affirmed the conviction and reduced the sentence as mentioned earlier.

This revision has been filed on the ground that learned Courts below have committed illegality as in the present case there is no legal evidence with regard to identification of the property as stolen property. There is no evidence that the alleged recovered golden ear ring was stolen property. There is no identification of the stolen property before the learned trial Court. Learned trial Court as well as learned appellate Court placed

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reliance on the proceeding of identification of the articles took place during the course of investigation, which is not a substantial piece of evidence. Hence, on the basis of the proceedings which took place in absence of the accused, it cannot be said that the property was identified as stolen property. Therefore, there is no evidence in this regard to connect the present applicant with the crime. Hence, the impugned judgments passed by the learned trial Court as well as learned appellate Court be set aside and the applicant be acquitted from the charges.

Learned Government Advocate opposed the aforesaid contentions and prayed for rejection of the revision petition.

I have heard the learned counsel for the parties at length and gone through the judgments and orders passed by the Courts below and also perused the record. In view of this court, the findings of the learned both the courts below are contrary to law and the same are not sustainable as there is no evidence with regard to identification of the property recovered from the possession of the applicant to be stolen property. Learned both the courts below with regard to identification of the property relied on the identification memo and in this regard, statement of complainant Jugal Kishore is relevant who has stated that during the investigation he identified the property and the identification memo was prepared. Any exercise with regard to identification of the stolen property during investigation is not a substantial piece of evidence. It can only be used for the purpose of corroboration



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of the evidence produced before the trial court with regard to identification. The seized article has not been produced before the trial Court with a view to get the property identified by the complainant. Hence, on record there is no substantial piece of evidence with regard to identification of the property as stolen property which was recovered from the possession of the applicant. In view of the circumstances, the conviction and sentence cannot be upheld.

Consequently, the criminal revision is allowed. The conviction of the applicant recorded by the Courts below under Sections 457 and 380 of the IPC and sentence thereof are hereby set-aside. The applicant is acquitted of the aforesaid offences.

The applicant is in jail. He is directed to be released immediately from jail, if not required to be detained in any other case. Fine amount if any deposited by the applicant be refunded to him.

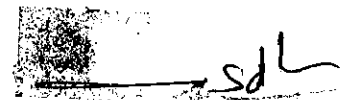
Before parting with this case, some observations about the Presiding Officers of the trial Court as well as learned appellate Court are required. In the criminal case, it is not only the duty of the prosecuting officer that the material evidence available in the case should be brought on record but it is also the duty of the Presiding Officer of the trial Court. In the present case, the Presiding Officer of the trial Court has not made efforts to call for the property for identification as the stolen property before the Court. Learned Sessions Judge has also ignored the aforesaid legal

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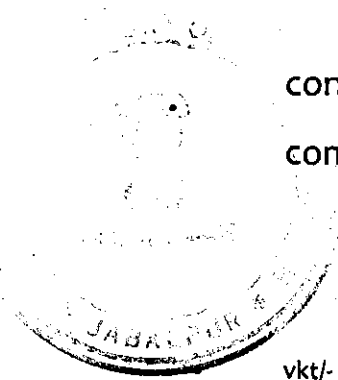
error and mechanically disposed of the appeal. This Court has gone through some other judgments in which similar legal mistakes have been committed by the President Officers, therefore, there is a need to take necessary steps to prevent the aforesaid mistakes by the Judges of the lower Courts. Hence, a copy of this judgment be sent to the **Registrar General** of this Court for taking necessary steps with the approval of Hon'ble the Chief Justice so that the culprits be not spared on account of the mistake of the Presiding Officers.

Record of the trial Court be sent back immediately to the concerned court below along with a copy of this order for its compliance and necessary action.

CC as per rules.



(J.P.Gupta)
Judge



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