



- 1 -

RCC 41/2008  
State Vs. Prashant  
Exh. 44

Received on 21/01/2008.  
Registered on 21/01/2008.  
Decided on 08/10/2014.  
Duration 06 Y 08 Ms 17 Ds

IN THE COURT OF SHRI S.S.UBALE, JUDICIAL MAGISTRATE, F.C.  
HINGOLI.

R.C.C.NO. 41/2008

Exh.No.44

The State of Maharashtra  
Through Police Station  
Hingoli(Rural), Tq. & Dist.Hingoli.

.... Prosecution.

Versus

Prashant S/o Baban Shrimant,  
Age: 27 years, occ: Nil.  
R/o Malhivra, Tq. & Dist. Hingoli.

... Accused.

Charge :- Offence punishable u/sec. 380 of Indian Penal Code,  
1860.

Appearance :-

Shri. S.D.Choutmal  
Shri. M.M.More

Ld. A.P.P for the State.  
Ld.Adv. for the Accused.

**JUDGEMENT**

(Delivered on 08/10/201)





- 2 -

RCC 41/2008  
State Vs. Prashant  
Exh. 44

1- Accused is facing trial for the offence punishable U/s. 380 of Indian Penal Code, 1860 (hereinafter referred to as I.P.C in short).

2- Facts giving rise to the prosecution case, in nutshell, are as follows-

On dated 26/07/2006, informant Janardhan Jadhav had purchased from one Hardeo Electric, Hingoli a mobile (having it's IMEI No. 357088008650347) of Nokia company for worth Rs. 4,000/-. It is alleged by the prosecution that on dated 27/10/2007, at about 8.30 a.m., the accused had come to the house of informant and committed theft of said mobile. When the informant had gone to the house of accused for taking back said mobile, accused was not present in his house. At that time, his mother had promised to informant that she would deliver to him said mobile but she didn't.

3- On the aforesaid basis, informant lodged his first information report dated 6/11/2007 as against accused and set the law in motion. Accordingly, an offence punishable U/s 380 of I.P.C. was booked vide Cr. No. 137/2007 with Hingoli (Rural) Police Station.

4- During the course of investigation, I.O. visited the spot of occurrence and prepared the scene of offence panchanama in presence of two panch witnesses. He then interrogated witnesses having acquaintance with the facts and circumstances of case at hand and recorded their statements in view of sec. 161 of Criminal





Procedure Code, 1973 (hereinafter referred to as *Cr.P.C.* in short). On dated 7/12/2007, I.O. nabbed accused who was then enlarged on bail. Accused, while in police custody, made disclosure statement dated 9/12/2007 and expressed his willingness to show the place where he had concealed the mobile of Nokia company alleged to have been stolen in commission of crime. Accordingly, memorandum panchanama to that effect was drawn. Pursuant to said disclosure statement, accused along with police personnels and two panch witnesses had gone to the house of accused and however, accused produced before I.O. said mobile of Nokia company from earthen pot. Said mobile was then seized by I.O. in presence of two panch witnesses and then he prepared seizure panchanama to that effect. As the investigation revealed complicity of the accused with commission of crime, I.O. charge sheeted him.

5- Upon going through report U/s 173(2) of Cr.P.C, documents submitted therewith and upon hearing the accused, my learned predecessor framed charge Exh.10 as against accused. Contents of charge were read over and explained to the accused in his vernacular form to which he pleaded not guilty and claimed to be tried.

6- In the light of charge Exh.10, evidence adduced by the prosecution and having regard to the submissions made across the bar, the following points arise for determination and I have





- 4 -

RCC 41/2008  
State Vs. Prashant  
Exh. 44

recorded my findings thereon for the reasons stated below -

POINTS

FINDINGS.

1- Whether prosecution proves that on dated 27/10/2007 at about 8.30 a.m., at village Malhivra, Tq. & Dist. Hingoli accused committed theft of a mobile of Nokia company worth Rs. 4,000/- which was kept in informant's building used as human dwelling and thereby committed an offence punishable U/s 380 of I.P.C.?

... In the negative.

2- What order ?

.... As per final order.

REASONS

7- I have heard Ld. A.P.P Shri S.D.Choutmal for the State and Ld. Adv. Shri M.M.More for the accused at considerable length and have gone through the evidence available on record.

8- In order to prove it's case, prosecution has examined only informant Janardhan S/o Pandurang Jadhav as P.W.1 at Exh. 43. It is a matter of record that informant turned hostile and therefore, evidence of prosecution came to be closed vide order passed below Exh.1. As there is no incriminating evidence surfaced as against accused, his examination U/s 313 of Cr.P.C. has been dispensed with vide order passed below Exh.1.





- 5 -

RCC 41/2008  
State Vs. Prashant  
Exh. 44

AS TO POINT NO. 1.

9- Informant/P.W.1 Janardhan has deposed that on dated 26/7/2006, he had purchased a mobile of Nokia company for worth Rs. 4,000/- and however, it was stolen away by somebody else on dated 27/10/2007. It is apposite to note that informant/P.W.1 Janardhan turned hostile and he, in his cross examination taken by Ld. A.P.P. Shri Choutmal in view of sec. 154 of Indian Evidence Act, 1872, denied having made portion mark 'A' appearing in his first information report to the extent that ' on dated 27/10/2007 at about 8.30 a.m., accused had come to his house and committed theft of his mobile of Nokia company worth Rs. 4,000/-.' Besides this, it is a matter of record that P.W.1 Janardhan has admitted in his cross examination taken by Ld. A.P.P. that his dispute with accused has been settled outside the court.

10- Looking from any angle, evidence adduced by prosecution cannot be said to be sufficient to fasten on the accused guilt in connection with the offence punishable U/s. 380 of I.P.C. As the informant/P.W.1 Janardhan turned hostile, prosecution has failed to prove as against accused the offence punishable U/s. 380 of I.P.C. Holding so, I have answered point Nos. 1 in the negative.





- 6 -

RCC 41/2008  
State Vs. Prashant  
Exh. 44

AS TO POINT NO.2:

11- My aforesaid finding left me with no option but to arrive at an inevitable conclusion that accused deserves to be acquitted of the offence punishable U/s. 380 of I.P.C. Holding so, I proceed to pass the following order:-

ORDER

- 1- Accused Prashant S/o Babanrao Shrimant, Age: 31 years, occ: Labour, R/o Malhivra, Tq. & Dist. Hingoli is hereby acquitted u/sec. 248(1) of Cr.P.C, of the offence punishable U/s. 380 of I.P.C.
- 2- Bail bonds of accused stand cancelled.
- 3- Upon verification of documents as to the ownership of seized mobile of Nokia company, concerned P.S.O./I.O. shall hand over said mobile to the informant Janardhan S/o Pandurang Jadhav after appeal period is over.

(Dictated and pronounced in the open court.)

**Linking Laws**  
"Link the Life with Law" All Judiciary Exam

(S.S.Ubale)

Date: 08/10/2014.

Judicial Magistrate F.C.,  
Hingoli.

