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**(2019) 08 UK CK 0196**

**In the Uttarakhand High Court**

**Case No : Criminal Revision (CRLR No. 115 Of 2011)**

Sarfaraj @ Pappu

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

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**Date of Decision : 27-08-2019**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 397, 401  
Indian Penal Code, 1860 — Section 392, 411

**Citation : (2019) 08 UK CK 0196**

**Hon'ble Judges : Sharad Kumar Sharma, J**

**Bench : Single Bench**

**Advocate : P.S. Bohra**

**Final Decision : Dismissed**

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## **Judgement**

Sharad Kumar Sharma, J

1. The present Criminal Revision is taken up in the revised call and none has put in appearance for the revisionist to assist the Court. This Court is being conscious of the fact that the Criminal Revision under Section 397 to be read with Section 401 of the CrPC cannot be dismissed for want of prosecution, hence, in the absence of the counsel for the revisionist, this Court has got no options except to proceed with to decide the revision itself on its own merit.

2. After having perused the records intrinsically, what is revealed is that the criminal revision, in question, arises out of an order / judgement dated 25th March 2011, as passed by the Additional Sessions Judge /2nd Fast Track Court, Haridwar in Criminal Case No. 125 of 2010, Sarfaraj v. State of Uttarakhand, by virtue of which the appellate order it has resulted into a dismissal of the appeal and consequently affirming the judgement dated 22nd September 2010, as passed by the Court of Chief Judicial Magistrate, Haridwar in Criminal Case No. 4281 of 2008, State v. Sarfaraz and another, convicting the revisionist for the commission of offence under Sections 392 and 411 of IPC.

3. Consequent to the judgements of conviction, which has been concurrently confirmed by both the Courts below, the revisionist has been directed to undergo three years rigorous imprisonment along with a fine of Rs. 5000/- for the commission of offence under Section 392 of IPC and for the commission of offence under Section 411 of IPC, he has been directed to undergo a rigorous imprisonment for a period of two years and fine of Rs. 5000/- has been imposed upon him. In either of the circumstances, if there is failure to comply with the said directions as given by the impugned orders of depositing the penalty, the revisionist/convict has been directed to further undergo the sentence of one month simple imprisonment.

4. The brief facts, as it is involved in the present revision is that as per the prosecution story, the incident is said to have occurred on 25th April 2002, where it is contended in the FIR No. 153/02 dated 25th April 2002, that at about 3:30 p.m. when the complainant was moving on a motorcycle (Hero Honda Splendar) bearing Registration No. UP-10D-9204 Model 2000, and when he was travelling from Jwalapur to Bahadarabad and when he was about to cross the Nehar Patti Ranipur Jhal, two boys on the route in question had apprehended the victim, showed him a country made pistol and threatened by it by doing away his life, and had snatched the motorcycle from his possession, including the bag which had the driving license of the complainant and a cash of Rs. 1000/- with some other business documents of the shop.

5. In the meantime, what had happened that when the crime was being committed by the revisionist, another vehicle being Tata 407 happen to cross that area and consequently the convict persons had driven the motorcycle away from the place and had taken it away and it was complaint of by the victim that along with the motorcycle, they have also taken away the bag, which was attached to it carrying the relevant documents of the vehicle, as well as cash of Rs. 1000/- which was placed in it.

6. Based upon the said complaint, which was registered as Case Crime No. 153 of 2002 for the commission of the aforesaid offences under Sections 392 and 411 of IPC, the revisionist was apprehended by Investigating Officer, it was on the pointing out of the revisionist that the motorcycle thus stolen by them was recovered. On the recovery of the vehicle, the investigation further proceeded and the Investigating Officer has prepared the site plan and the place from where the vehicle was recovered, he recorded the statement of Sarfaraz alias Pappu, Yameen and Yasmeen with regards to substantiating the commission of offence under the aforesaid Sections on 25th April 2002. Thus, the Investigating Officer submitted chargesheet against the accused Sarfaraz and Yasmeen. As the proceedings against Yameen abated on account of his death.

7. The revisionist/convict after the submission of the chargesheet were summoned by the learned trial Court and the trial commenced and as a consequence thereto, for the purposes of establishment of the offence as against the revisionist, the prosecution has examined as many as about 5 witnesses, that

is PW1, Anubhav, PW2 Constable Sheeshpal Singh, PW3, SI Rajendra Kumar Tyagi, PW4 Constable Vinod Kumar and PW5 Constable Satendra Tyagi, who are the police officers, who were engaged in the investigation and who had ultimately recovered the vehicle and later on, on their statements, which were recorded particularly by PW3, he had rather fortified the contents of the complainant with regards to the act of snatching of the vehicle by exerting force and threat of life being given to the complainant by a fire arm i.e by country made pistol, which the revisionist was shown to be carrying with other co-accused at the time, when they had committed the offence.

8. The victim of the incident had submitted that he could not clearly identify the persons who were involved in the aforesaid crime for the reason that at the time when they were engaged in act of snatching the motorcycle, their faces were covered with the piece of cloths. But since the convict persons were recovered along with the stolen motorcycle and the motorcycle thus stolen was recovered on their pointing out, the Court on considering the statements of police officials, who were engaged in the investigation had ultimately, by the judgement dated 22nd September 2010, had convicted the accused person i.e. revisionist herein for the commission of offence under Sections 392 and 411 of IPC and quantum of punishment as already detailed in above has been inflicted, but as far as other co-accused Yaseen is concerned, he was acquitted by the learned trial Court for the commission of offence under Sections 392 and 411 of IPC.

9. The revisionist, being aggrieved against the judgement of the conviction dated 22nd September 2010, as rendered in Criminal Case No. 4281 of 2008, State v. Sarfaraz and others had preferred a Criminal Appeal being Criminal Appeal No. 125 of 2010, Sarfaraz v. State of Uttarakhand before the Court of Additional Sessions Judge/ 2nd FTC Haridwar. The Appellate Court too, after considering the entire narration of facts and the findings, which has been recorded by the learned trial Court, particularly the fact pertaining to the appreciation of the evidences and particularly in relation to the statements recorded by the police officials, who were instrumental in conducting the investigation and recovering the vehicle on the pointing out of the revisionist had held that as far as the inferences drawn by the trial Court, no anomaly can be said to have been chanced in procedurally following the process for the purposes of prosecuting the victim for the commission of the aforesaid offences.

10. The learned Appellate Court too while agreeing with the findings of the judgement rendered by the trial Court dated 22nd September 2010, had scrutinized the statements particularly that of PW 2 and PW 4 thus the appellate Court too by the judgement dated 25th March 2011 has affirmed the sentence as inflicted by the learned trial Court dated 22nd September 2010.

11. Since this Court, after going through the judgements of both the Courts below and with regards to the impact of narration of the story which stood substantiated by the police officials who were the members of the investigation team and who have appeared in the witness box and recorded their statements

to the effect that since the stolen vehicle itself was recovered at the pointing out of the revisionist, that in its self infers that there was direct involvement of the revisionist in commission of the offences which is complaint of against him in the FIR and which stood established by both the Courts below by an order of conviction.

12. Since the incident itself was not denied by the revisionist, coupled with the fact that since it was he who has pointed out the location of the vehicle after the same being plundered by him on 25th April 2002, this Court is of the view that the finding, which has been recorded by both the Courts below with regards to the factum of the incident which has occurred, it is too established on the appreciation of evidence on record hence this Court does not find any anomaly in the impugned orders of conviction. Consequently, while affirming the sentence as imposed by the learned trial Court and affirmed by the Appellate Court, this Court does not find any merit in the revision, consequently the same is dismissed.

13. The revisionist who is on bail in pursuance to the order dated 26th May 2011, is directed to surrender forthwith before the Magistrate concerned, and the Magistrate concerned is directed to take him in custody and to direct him to serve the sentence as inflicted by the learned trial Court and affirmed by the Appellate Court and this Court, and the sureties as extended by the revisionist for availing the bail in pursuance to the order dated 26th May 2011 would stand discharged.

14. Accordingly, the revision is dismissed.