

**(2016) 11 PAT CK 0055**

**In the Patna High Court**

**Case No : Criminal Revision No. 673 of 2014**

Sheojee Nat @ Sahendra Nat @ Pandey Nat

APPELLANT

Vs

State of Bihar

RESPONDENT

**Date of Decision : 08-11-2016**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 379

**Citation : (2017) 1 ECRC 90**

**Hon'ble Judges : Chakradhari Sharan Singh, J.**

**Bench : Single Bench**

**Advocate : Ms. Indu Kumari Srivastava, APP, for the Respondent; Mr. Rajiva Ranjan, Advocate, for the Petitioner**

**Final Decision : Dismissed**

## Judgement

Chakradhari Sharan Singh, J. (Oral) - This criminal revision application has been filed, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, by the petitioner, who is aggrieved by the judgment and order, dated 09.06.2014, passed by the learned 2nd Additional Sessions Judge, Bhojpur, at Ara, in Criminal Appeal No. 15 of 2014.

2. By the said judgment and order, learned 2nd Additional Sessions Judge, Bhojpur, at Ara, has affirmed the judgment of conviction and order of sentence, dated 06.03.2014, passed by the learned Railway Judicial Magistrate, Bhojpur, at Ara, in Trial No. 352 of 2014, arising out of G. R. No. 115 of 2012 (Ara G.R.P.S. Case No. 54 of 2012) to the extent of his conviction of the offence punishable under Section 379 read with Section 34 of the Indian Penal Code.

3. The learned Appellate Court has, however, set aside the conviction of the petitioner as recorded by the learned Trial Court of the offence punishable under Section 411 read with Section 34 of the Indian Penal Code.

4. The learned Trial Court, after having recorded the conviction of the petitioner, had imposed sentence of rigorous imprisonment for 2 (two) years for each of the

offences, i.e., for Sections 379 and 411 read with Section 34 of the Indian Penal Code. The Appellate Court has affirmed the order of sentence imposed upon the petitioner by the Trial Court, in the light of his conviction of the offence under Section 379 of the IPC.

5. The case of the prosecution, briefly narrated, is that when some police personnel were on duty in a train running from Patna to Buxar to check/prevent crime in the train, at Ara Railway Station, one person boarded the train in Sleeper Class. When the train pushed off from Ara Railway Station, a passenger raised a cry since his attachi/briefcase was found missing. A person was found trying to flee away thereafter, who was chased and caught by the police personnel with the help of the passengers. The person, who was apprehended, disclosed his name as Sheojee Nat @ Sahendra Nat @ Pandey Nat (the present petitioner) and admitted his guilt and in response to a query, he disclosed that he had handed over the said attachi/briefcase to coaccused Santosh Nat, who, in turn, had handed over the same to one Saheb Yadav, a tempo driver. The victim passenger was not in a position to break his journey and the First Information Report was thus registered on the basis of the written report of the police officer, who was examined, at the trial, as PW 3.

6. The petitioner was put on trial, after submission of the charge sheet by the police and framing of the charges against him and another co-accused, Saheb Yadav, for the offence punishable under Sections 379 and 411 read with Section 34 of the Indian Penal Code. At the trial, prosecution witnesses supported the case of the prosecution. The victim was examined as PW 6.

7. It transpires from the evidence on record that on the basis of the confessional statement of the petitioner, co-accused Saheb Yadav was apprehended and on whose confessional statement and identification, in the presence of the independent witnesses, stolen articles were recovered.

8. After having appreciated and analysed the evidence on record, including deposition of 6 (six) prosecution witnesses, the learned Trial Court recorded conviction of the petitioner of the offence under Sections 379 and 411 read with Section 34 of the Indian Penal Code. The co-accused Saheb Yadav was also convicted of the same offence and both of them were sentenced to undergo rigorous imprisonment for a period of 2 (two) years.

9. As has been indicated, at the very outset, the learned 2nd Additional Sessions Judge, Bhojpur, at Ara, upon re-appreciation of evidence, set aside the conviction of the petitioner of the offence punishable under Section 411 read with Section 34 of the Indian Penal Code, as according to him, no offence under the said provision could be made out so far as the present petitioner was concerned.

10. Learned Counsel appearing on behalf of the petitioner has submitted that the judgments and orders, passed by the Courts below, are perverse and need interference by this Court, in exercise of power under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. He has further submitted

that a lenient view may be taken in the facts and circumstances of the present case since the petitioner has already remained in custody for a period of more than a year (i.e., nearly one year and 3-4 months).

11. It is evident from the record that there is concurrent finding of fact recorded by the Court below on the point of conviction of the petitioner under Section 379 read with Section 34 of the Indian Penal Code. Upon perusal of the deposition of the prosecution witnesses and other materials on record, it cannot be said that the said findings are perverse, requiring interference in revisional jurisdiction.

12. So far as the submission advanced on behalf of the petitioner that this Court should take a lenient view in the facts and circumstances of the case, I do not feel convinced by such submission, considering the manner of occurrence where the petitioner has been found to have plundered the belongings of a passenger traveling in the train. This court cannot lose sight of the regular feature of such offences being committed in running trains.

13. I do not find any merit in this application, which is accordingly dismissed.

14. Since the petitioner is on bail by virtue of the order of this Court, dated 10.09.2014, passed in the present proceeding, his bail bonds are cancelled. The petitioner is directed to surrender before the Court below within a period of 15 (fifteen) days from today to serve out remaining sentence, after adjusting the period for which he has already remained in custody in connection with the present case.

15. If the petitioner fails to surrender before the Court below within the aforesaid period of 15 (fifteen) days, the Court below shall be required to take all possible steps to secure attendance of the petitioner.

16. This application accordingly stands dismissed.