
(2020) 12 JH CK 0060

In the Jharkhand High Court

Case No : Criminal Revision No. 1107 Of 2014

Sudhir Sinku And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 392, 411

Code Of Criminal Procedure, 1973 — Section 313, 451

Citation : (2020) 12 JH CK 0060

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Anjani Kumar, Shekhar Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. Anjani Kumar, the learned counsel appearing on behalf of the petitioners.

2. Heard Mr. Shekhar Sinha, the learned A.P.P. appearing on behalf of the Opposite Party-State.

3. This criminal revision petition has been filed by the petitioners against the judgment dated 27.08.2014 passed by the learned Sessions Judge, West

Singbhum at Chaibasa in Criminal Appeal No. 78 of 2014 whereby and whereunder the appeal was dismissed.

4. The criminal appeal was preferred before the appellate court against the Judgment of conviction and the order of sentence dated 15.07.2014 passed

by the learned S.D.J.M., Sadar, Chaibasa in G.R. case No.601 of 2012 / T.R. Case No. 183/2014 (arising out of Hatgamharia P.S. Case No.35/2012

dated 19.12.2012) whereby and whereunder the petitioners were held guilty for commission of the offence of robbery under Section 392 of the Indian

Penal Code (hereinafter referred to as 'IPC') and recovery of stolen/robbed articles under Section 411 of the Indian Penal Code and were convicted accordingly.

5. On the point of sentence, the learned trial court observed that since both the petitioners have been found guilty under Section 392 and 411 of the Indian Penal Code, they have to be sentenced only in one of these offences and sentenced the petitioners for the graver offence i.e. under Section 392 of the Indian Penal Code. The petitioners were sentenced under Section 392 of the Indian Penal Code only to undergo Rigorous Imprisonment for 03 (three) Years with fine of Rs.10,000/- and in default of payment of fine, to undergo Simple Imprisonment for 09 (nine) months. It was further ordered that the period already undergone by the petitioners in custody during trial shall be set off.

Arguments on behalf of the petitioners

6. Learned counsel for the petitioners submitted that in the present case, neither the seized articles have been produced before the learned trial court, nor the Informant has identified the petitioners. He further submitted that the seizure list witnesses have turned hostile and the petitioners in their statements recorded under Section 313 of Cr.P.C. had denied the allegations leveled against them and have also explained their stand, although they did not lead any defence evidence and therefore, the conviction of the petitioners is perverse and unsustainable in the eyes of law.

7. On the point of sentence, the learned counsel for the petitioners submitted that the petitioners have already remained in custody for the period from 19.12.2012 to 09.01.2015 i.e. for more than 02 Years and the total period of sentence imposed upon them is rigorous imprisonment of three years under Section 392 of the Indian Penal Code. He further submitted that the learned trial court has recorded that the Petitioner No.1 has criminal antecedent, but the Petitioner No.2 has no criminal antecedent. The learned counsel has also submitted that considering the period of custody of the petitioners, some sympathetic view may be taken, on the point of sentence.

Arguments on behalf of the Opposite Party-State

8. Learned counsel appearing on behalf of the Opposite Party- State, on the other hand, opposed the prayer made on behalf of the petitioners and submitted that the petitioners have committed offence of serious nature and the

learned courts below have given consistent findings and the scope of interference in revisional jurisdiction is very limited. He further submitted that considering the facts and circumstances of the case, no interference is called for in the impugned judgments.

Findings of this Court

9. This Court finds that the prosecution case is based on the fardbeyan of the Informant recorded by A.S.I. Bhaiya Ram Oraon (PW-4) alleging inter-

alia that the Informant Santosh Mahto (PW-2) loaded iron ore in 18-wheeler trailer bearing Registration No. NL-05-3175 and proceeded from Bara

Jamda to Chouka. When he reached Hatgamharia Main Road, he started cleaning the screen and in the meantime, a Bolero Jeep bearing Registration

No. JH-05W-1400 stopped at a distance of about hundred yards and four persons came from it near the Informant. They assaulted the Informant with

danda and snatched away his mobile phone and purse containing Rs.7,000/- and fled away from there by the Bolero Jeep. Thereafter, the police

patrolling party approached the place of occurrence and the Informant disclosed about the occurrence. Then, the police party chased and intercepted

the Bolero Jeep at a foreign liquor shop and apprehended three of the miscreants who disclosed their names as Sudhir Sinku, Mukesh Chatomba and

Soma Chatomba. Upon search, the mobile phone and Rs.3,500/- alongwith the purse of the Informant were recovered from their possession which

were seized and a seizure list was prepared accordingly. The miscreants also disclosed the name of the accused who fled away from the spot as

Nitesh Chatomba and the accused were arrested and brought to the police station, where a formal F.I.R (Exhibit- 3) was registered. After

investigation of the case, charge sheet was submitted against three accused persons and the case of the accused Soma Chatomba, who was declared

juvenile, was forwarded to Juvenile Justice Board. After conclusion of trial, the learned court below did not find sufficient evidence against the

accused Nitesh Chatomba and acquitted him.

10. On the basis of the fardbeyan of the Informant, the case was registered as Hatgamharia P.S. Case No.35/2012 dated 19.12.2012 and after

completion of investigation, charge- sheet was submitted against the petitioners and cognizance of the offences under Sections 392/411 of Indian

Penal Code was taken against the petitioners.

11. On 17.04.2013, the charges under Sections 392/411 of Indian Penal Code were framed against the petitioners which were read over and explained

to them in Hindi to which they pleaded not guilty and claimed to be tried.

12. This Court finds that in course of trial, the prosecution examined altogether five witnesses in support of the case. PW-1 (Kabir das Gagrai @

Kabri Gagrai) is a seizure list witness, PW-2 is Santosh Kumar Mahto (Informant), PW-3 (S.I. Chandra Deo Ram) is the second investigating officer

of the case, PW-4 (A.S.I. Bhaiya Ram Oraon) is the first investigating officer of the case and a member of the police team which had chased the

criminals and had apprehended the petitioners and PW-5 (Amit Das) is the other seizure list witness. The prosecution exhibited the seizure list as

Exhibit- 1/1, fardbeyan as Exhibit-2/1 and the formal F.I.R. as Exhibit-3. Confessional statement of Nitesh Chatomba and Sudhir Sinku were exhibited

and marked as Exhibits 4 and 5 (with objection).

13. On 11.06.2014 and 12.06.2014, the statements of petitioners under Section 313 of Cr.P.C. were recorded wherein they claimed to be innocent and

declined to adduce any defence evidence.

14. As is apparent from the perusal of the impugned judgements, P.W. 2 is the informant of the case, who has fully supported the F.I.R and has also

deposed that when the incident was disclosed to the police patrolling party, the miscreants were chased and intercepted by police and three accused

persons were arrested on the spot and upon their search, the mobile phone of the informant along with purse containing Rs.3,500/- was seized by the

police which he identified to be his own. He had also further stated that the accused persons came on Bolero bearing No. JH 05W -1400. However

he has admitted that the recovery of the stolen articles had not taken place in his presence.

P.W. 4 is the Investigating Officer of the case, who has also proved the content of the F.I.R and has stated that he along with other police personnel

chased the miscreants and intercepted the Bolero jeep near Foreign Liquor Shop and the miscreants were arrested, who had disclosed their name and

the looted articles were seized which were also identified by the informant.

P.W. 3 is the second Investigating Officer of the case, who had also supported the F.I.R and proved that the seizure list was in his hand writing and

the signature of the seizure witnesses, P.W. 1 and P.W. 5 were there. He had also

recorded the statement of the accused Nitesh Chatomba, whose name was disclosed by the apprehended accused and Nitesh Chatomba had confessed his guilt.

15. The learned court below has found from the evidences of P.W. 2, 3 and 4 that there is consistent evidence regarding the arrest of three persons

after they were chased and also recovery of the looted articles from them which were identified by the informant of the case to be his own.

16. So far as P.W. 1 and P.W. 5 are concerned, they are seizure list witnesses. P.W. 1 has identified his signature over the seizure list as Exhibit 1,

but has stated that his signature was obtained by the police on the next day at police station. So far as the other seizure list witness i.e., P.W. 5 is

concerned, he is an employee of R.K. Kanta and he has proved his signature on the seizure list of the stolen articles but has not supported the

prosecution case on the point of seizure having been made in his presence.

17. The learned trial court also considered the contention of the defence that P.W-4 was both the member of the police team which made recovery

and seizure of the looted articles and was also the Investigating Officer of the case, but such argument was rejected on the ground that there was

neither allegation of any prejudice or bias to the accused against P.W.4 nor any such bias or prejudice appears from the material on record. The

learned trial court also recorded that P.W. 4 had deposed in para 19, 20 and 21 of his evidence that at the time of occurrence, there were only two

A.S.I at his police station and he had informed his senior officers about himself assuming charge of the investigation of the case and thus, the learned

trial court was of the view that proper explanation was made by P.W.4 about himself taking over the charge of investigation of the case even though

he was the member of the police team which had made search and seizure of the looted articles. The learned trial court was of the view that there is

no bar to the member of a raiding team to become the investigating officer of the case and the same is justified in absence of any allegation of

prejudice or biased role played by him during investigation and in the present case there is neither any allegation of any prejudice nor any allegation of

any bias against the investigating officer of the case or against any of the prosecution witnesses.

In the arguments before this court, no argument has been advanced by the

learned counsel for the petitioners in connection with the fact that the investigating officer of the case was also a member of the police team which made the recovery and seizure of the looted articles.

18. The learned trial court was of the view that the prosecution has been able to prove the case against the present petitioners and held them guilty of

offence under Section 392 of IPC and recovery of stolen /robbed articles under Section 411 of IPC. The learned trial court also passed a speaking

order so far as sentence is concerned and recorded that the petitioner Sudhir Sinku had also got criminal antecedents and convicted the petitioners for

rigorous imprisonment of 3 years with fine of Rs.10,000/- and in default of payment of fine to further undergo simple imprisonment of 9 months and

the period already undergone by the petitioners in custody during trial was directed to be set off.

19. Before this Court, the learned counsel for the petitioners has made three arguments, one, the informant of the case had not identified the

petitioners, second, the seizure list witnesses had turned hostile and third, the seized articles were not exhibited before the learned trial court.

On the point of non-production of seized articles

20. Upon perusal of the judgment passed by the learned court below, this Court finds that although the seized articles were not exhibited as material

exhibit, but the reason of their non-production has been recorded by the learned trial court. It has been recorded that an application dated 18.06.2014

along with photocopy of letter dated 08.06.2014 was submitted by the Officer-in-charge of Hatgamharia police station to the Superintendent of Police,

Chaibasa wherein, it was mentioned and explained that due to not making over charge of Malkhana at the police station by the previous officer-in-

charge, the looted / seized articles could not be produced before the court and the learned trial court was of the view that there is a reasonable

explanation by the prosecution regarding non-production of the seized material before the court.

21. This Court also finds that the learned trial court considered the point of non-production of the case property in the light of the judgment passed by

Hon'ble Punjab and Haryana High Court in the case of B alraj Singh Vs. State of Punjab reported in 1982 CriLJ 137 4 to hold that the non- production

of the seized articles i.e., the case property by itself does not vitiate the trial and

conviction.

22. The Hon'ble Punjab and Haryana High Court in the judgment of Balraj Singh (Supra) has elaborately considered the plea raised that no conviction

can be allowed to stand in case where there has been a failure (however innocent and inadvertent) to exhibit the case property in the court itself, and

consequently, the argument that non-production of case property has to necessarily lead to no conviction.

The said argument has been rejected by Hon'ble Punjab and Haryana High Court by well-reasoned judgment. The relevant portion of the judgment of

Hon'ble Punjab and Haryana High Court i.e., para 7, 8, 9 and 10 are quoted hereunder:

7 . We regret our inability to subscribe to any such abstract theory. The larger perspective of a criminal trial cannot be possibly lost sight of. Usually,

if not invariably, the conviction in a criminal trial rests on the direct testimony and the credibility and acceptability thereof. In the present case it is

primarily the unimpeachability of the evidence of P- W. 1 H. C. Rajinder Singh and P.W. 2 Excise Inspector Randhir Singh coupled with the

documentary evidence of the disclosure statement, Exhibit P. A, and the test report Exhibit P.W. etc., which forms the core of the prosecution case. It

is the actual possession of the contraband property by the accused at the material time which is the crucial issue to be established. The production of

case property later in Court is only a corroborative piece of evidence. If the direct testimony is credible and unimpeachable and in the view of the

Court is sufficient to establish the charge and a consequent conviction it cannot be said that the whole of it would lose all its value by the mere non-

production of the case property which is merely corroborative. It must always be borne in mind that the trial of offences and their punishment is a

matter of substance which turns on the weight and the credibility of direct evidence and not merely on the technicalities of procedure.

8. Apart from principle, the fact that the case property by itself is not the very sine qua non of a criminal trial seems to be manifest from the statutory

provisions of Section 451, of Criminal P. C. itself. It is in the following terms:

Section 451. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for

the proper custody of such property pending the conclusion of the inquiry or trial,

and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation: For the purposes of this section, 'property' includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

9. Before us the learned Counsel for the petitioner had' attempted to draw a distinction between the case property which is the subject-matter of the

offence as against a case property which has been merely used for the commission of a crime, e. g., the weapon of offence etc. It, therefore, calls for

pointed notice that Clause (b) of the explanation aforesaid brings within its sweep any property regarding which an offence appears to have been

committed also apart from other kinds of case property. Even with regard to this kind of property Section 451 aforesaid gives the widest discretion to

the Court to sell or otherwise dispose of the same. It seems to be manifest that an order Under Section 451 may be passed long before the stage of

the trial and the occasion for producing the same therein. Equally it calls for notice that the ambit of Section 451 is not confined merely to property

which is subject to speedy and natural decay but also wide- rangingly extends to each and every case of property if the Court is of the opinion that it is

otherwise expedient to make an orderthereunder. Obviously in such a case where an order of sale or disposal has been made earlier under the statute

there can be no question of the production of such a property and exhibiting the same at the time of the trial. Can it possibly be said in such a situation

that the subsequent criminal trial would be vitiated merely on the score that the case property regarding which an offence had been committed was

not produced and exhibited? The answer plainly appears to be in a categoric negative.

10. When the aforesaid Section 451 of the Code itself positively visualises and sanctifies the non-production of case property in the trial can it then

reason- ably be said that a mere inadvertence or omission in producing the same and not exhibiting it in Court would per se be fatal to the prosecution

case. I do not think so. No principle could be cited before us which would show

that the mere exhibition of the case property was so pivotal a thing that the failure to do so would take the very bottom out of a criminal prosecution. Apart from the cases covered by Section 451 of the Code it is equally possible to visualise a number of contingencies where it may not only be inexpedient but virtually impossible to produce the whole of the case property at each and every hearing. In a case of recovery of lahan where a large haul of 40 Or 50 drums is made, can it be said that the conviction must rest on the production of all these drums in the Court room at all the stages of the trial if a recalcitrant accused so demands. Sometimes the contraband property may be so voluminous in its mass that its repeated production in Court may be extremely difficult and in essence equally pointless. One can imagine whole truckloads of poppy husk etc. recovered for an offence under the Opium Act or similar loads of food grains or cement regarding which an offence may have been committed under the Essential Commodities Act in specific cases. Would it be legally mandatory to produce and exhibit every grain of the contraband poppy husk or food grains and cement bags in such a case at every hearing in the Court. I do not think that their exhibition in Court at all stages can be made the cornerstone of the prosecution case to the extent that a mere non-production thereof would ipso facto be fatal to the trial itself.

23. This Court is in complete agreement with the aforesaid view expressed by Hon'ble Punjab and Haryana High Court and is also of the considered view that mere non-production of the seized articles is ipso facto not fatal to the trial and that the production of the case property in the court is only a corroborative piece of evidence. If the direct testimony is credible and unimpeachable, the same is sufficient to establish the charge. It cannot be said that the whole of it would lose all its value by mere non-production of the case property which is merely corroborative and that it always be borne in mind that the trial of the offence and punishment is a matter of substance which turns on the weight and the credibility of the direct evidence and not merely on the technicalities of the procedure. In this very same judgment, the Hon'ble Punjab and Haryana High Court had also given a strong note of caution in para 15 as follows:

15. I must, however, sound a strong note of caution that the view I am inclined to take must not be misunderstood to mean as if the production of the

case property is to be dispensed with at the trial. Normally it is the duty of the prosecution to do so. Equally if some thing vital turns on it the accused can insist upon its production and the refusal to do so would be a factor for adverse notice against the prosecution by the Court. But in the ultimate analysis the issue is one of the prejudice caused to the accused and any failure of justice resulting therefrom. In this context the question whether such an objection could be, but has not been raised at the earliest stage of trial is of considerable relevance. In a case of innocent or inadvertent nonproduction of the case property material prejudice is to be shown by the accused in order to claim the vitiation of the conviction. No abstract or absolute rule that "no case properly, no conviction," can possibly be raised to the pedestal of a rule of law, because this by itself is likely to occasion a failure of justice. As has been said earlier the substantial issues in a criminal trial like the proof and punishment of crime should not be converted into a plaything of technicalities. If the prosecution has innocently or inadvertently failed to exhibit the case properly, yet the accused even though fully represented by counsel makes no objection or grievance thereof at the time of the trial, it would hardly lie in his mouth at the revisional stage to say that all the proceedings stand vitiated even though connived at or wholly condoned by his own conduct.

24. In the present case the legal effect of non-production of seized articles has been duly considered by the learned courts below and upon appreciation of the evidences on record the same has been found to be not fatal to the prosecution case. This court is of the considered view that the learned courts below have rightly appreciated and considered the plea and consequences of non- production of the seized articles before the learned court below.

25. The learned trial court held that in view of the cogent and reliable evidence of P.W.2 and P.W.4, and the explanation offered by the prosecution for non-production of the seized articles before the court, no doubt about the recovery and seizure of articles can be made and it did not affect the case of the prosecution at all.

26. This Court finds that, on the one hand, non-production was fully explained as aforesaid and, on the other hand, no prejudice has been caused on account of non-production of the seized articles before the learned trial court in

view of the fact that the informant of the case has himself stated that the police had brought these persons along with the looted article which he identified to be his own. The informant has further stated that the seized articles were never released in his favour and were still lying with the police. This has been recorded in the impugned judgments.

27. There are two seizure list witnesses, one is P.W.1 and the other is P.W.5. From perusal of the judgment passed by the learned courts below, this

Court finds that the evidence of seizure list witnesses has been duly considered by the learned trial court at para 24 and 25 which are quoted as under:

24. Thus, both the informant (PW 2) and the officer apprehending the criminals and recovering the looted articles i.e., P.W. 4 have fully supported

the prosecution case including the recovery and seizure of the robbed articles from three criminals including A - 1 and A - 2. Both the seizure list

witnesses i.e., P.W. 1 & 5 namely Kabir Das Gagrai @ Kabir Gagrai and Amit Das have identified their signature (Exbt. 1 & 1/2) on the seizure list

(Exbt. 1/1). Even though these seizure list witnesses have not fully supported the factum of recovery in their presence, P.W. 1 has fully identified his

signature over the seizure list and has supported the factum of loot from in front of the R.K. Kanta where he was on duty. P.W. 5 was also on duty

on the said R.K. Kanta and he has also identified his signature. Merely because the seizure list witnesses (P.W 1 & 5) have not fully supported the

factum of recovery of looted articles in their presence, it does not make any difference or affect the prosecution case as both of them have fully

admitted making their signatures over the seizure list. In view of the decision of Hon'ble Patna High Court in the abovenoted case of ""Raj Kuma

Yadav - Vs. State of Bihar 2012 (2) East Cr. C. 280 (Pat.) wherein it has been held that in such case, admission of signatures by the seizure list

witnesses is sufficient and the same does not create any doubt about the recovery if seizure list has been proved. Similar view has been made by the

Hon'ble Supreme Court of India in the case of Modan Singh Vs. State of Rajasthan 1978 CrLJ 1531 (SC.)It has been held in para 9 thereof as

under:

9..... If the evidence of Investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on

ground that seizure witnesses do not support the prosecution version....

25. accused Sudhir Sinku (A-1) and Mukesh Chatomba (A-2) were arrested on the spot with the looted articles and have also been identified in the court by P.W. 4 ASI Bhaiya Ram Oraon. They have also made their signatures on the seizure list and have been arrested by the police and have been forwarded before the court. Thus, the arrest of these two accused i.e. A-1 and A-2 on the spot has been proved beyond reasonable doubts. Both of them have also admitted making their signatures on the seizure list but say that they made the same on plain paper as directed by the police. They claim that they have been arrested by the police not from near foreign liquor shop at Village Jaipur but from their house. But they have not adduced any defence evidence in support of their claim.

28. The learned court was of the considered view that the evidence of the informant P.W. 2 and that of P.W. 4 was clear, cogent and without any contradiction and were reliable and trustworthy and there was no reason to disbelieve the evidence of these witnesses. The learned trial court also recorded that the accused were unknown to the informant and there was no ground of any false implication of the accused at the hand of the informant or the police party. The learned court was also of the considered view that their arrest by the police and recovery of the looted articles from them was proved beyond reasonable doubt and the fact remains that P.W. 2 and P.W. 4 have stated before the learned trial court that the seized articles were identified by the informant of the case to be his own and non-production of the recovered articles were duly explained before the learned trial court.

29. Learned counsel for the petitioners has also argued that the petitioners were not identified by the informant of the case. The reason for not identifying the apprehended persons has been explained by the informant stating that there was little darkness at the spot as recorded in the impugned judgment itself. Non identification of the accused by the informant has no bearing in this case as the informant (P.W-2) stated that the police had brought his purse and mobile phone along with 3 apprehended persons and accordingly at the time of apprehending the accused and seizure of the articles from their possession the informant was not present at that spot.

30. This Court finds that the learned courts below after due appreciation of evidences on record and considering all the aspects of the matter have

rejected the plea of the petitioners by speaking orders based on judgments passed by Supreme Court / High Court. This Court in revisional jurisdiction has no scope for reappreciation of evidence and coming to a different conclusion as there is neither any perversity, nor any illegality or irregularity calling for any interference in the impugned judgements.

31. This Court finds that the learned trial court discussed and considered the evidence of the prosecution and summarized its findings in Para-22, 23

and 24 that PW-2 and PW-4 are the most material witnesses of the case and both have fully supported the prosecution case including recovery and

seizure of the robbed articles. PW-4, who had apprehended the petitioners, has identified both the petitioners in court. Both the seizure list witnesses

i.e. PW-1 and PW-5 have identified their signatures on the seizure list as Exhibit-1/1 & 1/2 respectively.

32. This Court further finds that the learned appellate court, after considering the evidences and materials on record, discussed and recorded its

findings in Para-6 of its judgment and summarized its finding in Para-8 that it is crystal clear that the petitioners were arrested with stolen articles just

after the occurrence and the seizure list was prepared and the victim (informant) of the occurrence also identified the stolen articles to be his own.

33. This Court, after going through the judgments passed by the learned trial court as well as the learned appellate court, finds that the petitioners were

arrested by the police team just after the occurrence and PW-4 was member of the police team and the robbed articles of the Informant (PW-2) were

recovered from their possession. The Informant (PW-2) has identified the recovered articles. This Court is of the considered view that the learned

appellate court has rightly recorded that non-production of the stolen articles during trial and joint seizure list do not affect the core prosecution case

which has been proved beyond doubt.

34. This Court finds that both the learned courts below have recorded concurrent findings and the judgments passed by the learned courts below are

well-reasoned judgments and upon consideration of the entire evidences on record, the learned courts below have rightly found that the prosecution

has been able to prove the case against the petitioners beyond all reasonable doubt. This Court finds no perversity or illegality in the impugned

judgments and no reason to interfere with the impugned judgments passed by

the learned courts below under its revisional jurisdiction. Considering the nature of the offence, the petitioners do not deserve any leniency on the point of sentence.

35. Accordingly, this criminal revision petition is dismissed.

36. Interim order, if any, stands vacated.

37. Bail bonds furnished by the petitioners are hereby cancelled.

38. Let the lower court records be immediately sent back to the court concerned.

39. Let a copy of this order be communicated to the learned court below through "email/FAX".