

**Krishnappa Vs. State of Karnataka**

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**SooperKanoon Citation :** [sooperkanoon.com/380658](http://sooperkanoon.com/380658)

**Court :** Karnataka

**Decided On :** Feb-13-1986

**Reported in :** ILR1986KAR1219

**Judge :** Desai, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 211(7) and 248(3)

**Appeal No. :** Crl. R.P. No. 42 of 1986

**Appellant :** Krishnappa

**Respondent :** State of Karnataka

**Advocate for Def. :** S.S. Koti, HCGP

**Advocate for Pet/Ap. :** P.H. Gotkhindi, Amicus Curiae

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Desai, J.**

1. The petitioner was the accused in C.C. No. 31/84 on the file of the J.M F.C. Koppal. He was tried for an offence punishable under Section 379 IPC for committing the theft of the cycle (M.O. 1) belonging to Somasundaram (P.W. 3)

when he had kept it near his photo studio at Koppal on or about 1-11-1983 at about 9-15 a.m.

2. As the accused pleaded not guilty to the said charge, P. Ws. 1 to 5 were examined and Exs. P-1 to P-5 were produced on behalf of the prosecution. The defence of the accused was one of total denial.

3. Accepting the prosecution evidence, the Learned Magistrate convicted him under Section 379 IPC and sentenced him to undergo simple imprisonment for three years and to pay a fine of Rs. 10/- or in default to undergo simple imprisonment for three months, taking into consideration the previous conviction as mentioned in Ex. P. 5. In appeal, the Sessions Judge, Raichur, confirmed the conviction but reduced the sentence to simple imprisonment for two years and six months and maintained the sentence of fine and the default sentence. Hence, this revision petition by the accused.

4. The two Courts below, on proper appreciation of the evidence on record have held that the accused committed the theft of cycle (M.O. 1) belonging to P.W. 3 and I see no reason to disagree with them. The I.O. (P. W. 5) has stated that he arrested the accused on 14-12-1983 in connection with another case and during interrogation the accused told him that he had sold a cycle to Sharnappa (P.W. 1) for Rs. 100/- as per Ex. P. 4(a) and recovered the cycle (M.O. 1) from P. W. 1 under Ex. P 1. The Learned Magistrate was not justified in marking the whole confessional statement of the accused as Ex. P. 4. He ought to have marked only the statement leading to the discovery of the cycle. Even the marking of Ex. P. 4 (a) also is not proper as it contains the confessional statement regarding the commission of theft. Only the statement to the effect that he had pledged the cycle to Sharnappa (P.W. 1) for Rs. 100/- would be admissible and that ought to have been marked. The evidence of P. W. 1 lends support to the evidence of I.O. and the pancha (P.W. 2). The evidence of P.W. 3 regarding the fact that the cycle was stolen and that M.O. 1 belongs to him has not been challenged in his cross examination. Under the circumstances it is proper to presume that the accused was a thief as he was in possession of it soon after the theft in accordance with Section 114(a) of the Evidence Act. Therefore, his conviction is proper.

5. The Learned Magistrate ought not to have allowed Ex. P. 5 regarding the previous convictions in evidence till he held him (accused) guilty. He ought to have framed an additional charge regarding the previous convictions as required under Section 248(3) and Section 211(7) of the Code of Criminal Procedure and that if the accused pleaded not guilty to the said charge he ought to have called upon the prosecution to prove the previous convictions and if they are proved, he could have taken them into consideration while sentencing the accused. In this case, the Learned Magistrate has not done so. Therefore, he was not justified in taking into consideration the previous convictions as alleged in Ex. P. 5, in awarding sentence to the accused. The accused has been in custody since 17-12-83. Under the circumstances, I think the period of imprisonment already undergone which is more than two years would suffice.

6. In the result, the conviction of the petitioner under Section 379 IPC is confirmed. But, the sentence of imprisonment passed on him is reduced to the period already undergone and the sentence of fine as also the default sentence are set aside. With the said modification in the sentence, the revision petition is dismissed.