

**Prem Chand Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-30-1989

**Reported in :** 1990WLN(UC)84

**Judge :** M.B. Sharma, J.

**Appeal No. :** S.B. Cr. Revision Petition No. 169 of 1986

**Appellant :** Prem Chand

**Respondent :** State of Rajasthan

**Judgement :**

**M.B. Sharma, J.**

1. Learned Counsel for the petitioner has challenged the conviction of the accused petitioner Under Section 379 IPC and sentence six months' rigorous imprisonment. The said conviction and sentence was recorded by the learned trial court under his judgment dated 5-8-1985 and which has been affirmed by the Id. Addl. Sessions Judge No. 2 Ajmer under his judgment dated 20-6-1986 The ground on which the said conviction has been recorded is that there is delay in lodging the FIR of about 4 to 5 days which has not been explained and that the property which is said to have been recovered at the instance of the accused-petitioner was not put for identification during the investigation; there is no material on record how the complainant could know that the accused-petitioner has committed theft. It is his

first offence and as such the accused petitioner was entitled to the benefit of the provisions of Section 360 Cr. PC or Section 4 of the Probation of Offenders Act, 1958 (for short, the Act). It is one of the mandate of the provisions contained in Sec 361 Cr. PC that in a case where the accused is entitled to get the benefit of the provisions of Section 360 Cr. PC or Section 4 of the Act and he is not given that benefit, it is the duty of the court to record special reasons for not giving him such benefit.

2. So far as the conviction of the accused-petitioner Under Section 379 IPC is concerned, both the courts below have considered the delay and also considered the material on record, the fact of discovery statement made by the accused-petitioner consequent upon which recovery of stolen property from the gold-smith in view of Section 114A of the Evidence Act, and therefore, the accused-petitioner could be convicted.

3. So far as the delay in lodging the FIR is concerned it may be stated that a bare reading of the FIR will show that firstly the accused-petitioner was not available in his house for last about 20 days and FIR was prepared and wanted to lodge the same at Alwar Gate Police Station, but it was given out that the FIR can be lodged at the Police Station Madanganj Kishangarh. The courts below have relied upon the explanation furnished by the complainants for delay in filing the FIR, and I find no reason to take a different view than that taken by the courts below in the matter. It can be said on the material on record that a theft of golden ornaments had taken place and as a result of discovery statement said to have been made by the accused petitioner to the Investigating Officer the accused petitioner led the Investigating Officer to the shop of Ramchand who was gold smith and there the stolen property was recovered. The stolen property was identified in the court by the witnesses. Thus the recovery of stolen property on the basis of discovery statement of the accused under Sec 114A of the Evidence Act was made and the learned courts below could have presumed that the accused-petitioner is either a thief or receiver of the stolen property of theft which took place on May 1, 1979 and the information by the accused Under Section 27 of the Evidence Act was furnished to the Investigating Officer on May 5, 1979, after the accused-petitioner was arrested and the property was recovered. It can be said that the stolen

property was recovered within 5 days of the alleged theft. Under these circumstances the learned trial court and appellate court were right in presuming that the accused petitioner was either thief or receiver of the stolen property.

4. I do not find any merit in the contention of the learned Counsel for the petitioner so far as the merits of the case are concerned. The offence is punishable with imprisonment of either description which may extend to three years or fine or both. In my opinion the sentence of imprisonment already undergone in the facts and circumstances of the case shall meet the ends of justice.

5. Consequently, I partly allow this revision petition and while maintaining the conviction of the accused-petitioner Under Section 379 IPC, he is sentenced to imprisonment for a period already undergone. He is on bail. He need not surrender to his bail bonds which are here by discharged.

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