

IN THE HIGH COURT OF JHARKHAND AT RANCHI

**Criminal Revision No.924 of 2012**

1. Dilip Kumar Verma son of Mahendra Prasad Swarnkar,  
Resident of Village - Jaridih Bazar, P.O. and P.S. Bermo,  
District - Bokaro
  2. Pappu Kumar Kashyap, son of Sri Gopal Prasad, Resident of  
Village & P.O. Chainpur, P.S. Chainpur, District - Palamau
  3. Pappu Kumar Agrawal, son of Mahesh Prasad Agrawal,  
Resident of Belwatika, P.O. and P.S. Daltonganj, District -  
Palamau
  4. Shiv Kumar Gupta, son of Ram Chandra Prasad Gupta,  
Resident of Main Bazar, Daltonganj, P.O. and P.S. Daltonganj,  
District - Palamau
- ... .. **Petitioners**
- Versus
- The State of Jharkhand ... .. **Opposite Party**

**With**

**Criminal Revision No.975 of 2012**

Raja Singh @ Kalu,  
Son of Sri Surendra Singh  
Resident of - Belwatikar Chowk, Medni Nagar [Daltonganj],  
Police Station & Post Office: Town Daltonganj [Medini Nagar],  
District: Palamau

... .. **Petitioner**

Versus

The State of Jharkhand ... .. **Opposite Party**

**With**

**Criminal Revision No.1011 of 2012**

Major Singh @ Mejoor Singh @ Jaiky Singh  
Son of Harbhajan Singh, resident of Jaridih Bazar, Post Office &  
Police Station - Bermo, District - Bokaro

... .. **Petitioner**

Versus

The State of Jharkhand ... .. **Opposite Party**

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioners : Mr. A.K. Kashyap, Senior Adv.  
: Mr. Suraj Kishore, Adv.  
[in Cr. Rev. 975 of 2012]  
: Mr. Ashok Sinha, Advocate  
[in Cr. Rev. No.1011 of 2012]  
: Mr. Nilesh Kumar, Advocate  
[in Cr. Rev. No.924 of 2012]

For the State : Ms. Priya Shrestha, Adv.  
[in Cr. Rev. No. 924 of 2012]  
: Ms. Vandana Bharti, Adv.

[in Cr. Rev. No. 975 of 2012]  
: Mr. Santosh Kumar Shukla, Adv.  
[in Cr. Rev. No.1011 of 2012]

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Through Video Conferencing

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08/08.09.2021 Heard Mr. A.K. Kashyap, learned Senior counsel appearing on behalf of the petitioner and Mrs. Vandana Bharti, learned counsel appearing on behalf of the State in Criminal Revision No.975 of 2012.

2. Heard Mr. Ashok Sinha, learned counsel appearing on behalf of the petitioner and Mr. Santosh Kumar Shukla, learned counsel appearing on behalf of the State in Cr. Rev. No.1011 of 2012.

3. Heard Mr. Nilesh Kumar, learned counsel appearing on behalf of the petitioners and Ms. Priya Shrestha, learned counsel appearing on behalf of the State in Cr. Rev. No.924 of 2012.

4. These batch of criminal revision applications have been filed against the judgment dated 03.09.2012 passed in Criminal Appeal No.58 of 2010 along with Criminal Appeal No.61 of 2010, Criminal Appeal No.62 of 2010 and Criminal Appeal No.64 of 2010 by the court of learned Additional Sessions Judge - II, Bokaro whereby the learned appellate court has partly allowed Criminal Appeal No.62 of 2010 to the extent that the conviction and sentence of Mejar Singh under Section 392 of Indian Penal Code was set aside and his conviction and sentence under Section 411 of Indian Penal Code was upheld. So far as other petitioners are concerned, they were convicted and sentenced for offence under Section 411 of Indian Penal Code by the learned trial court and their conviction and sentence was upheld by the learned appellate court.

5. Following is the chart representing the Criminal Appeals filed by the present petitioners before the learned court below:

<b>Petitioners</b>	<b>Criminal Appeal</b>	<b>Criminal Revision</b>
1. Pappu Kumar Kashyap 2. Pappu Kumar Agrawal 3. Shiv Kumar Gupta	Cr. Appeal No.58 of 2010	Cr. Revision No.924 of 2012
4. Dilip Kumar Verma	Cr. Appeal No.64 of 2010	
5. Raja Singh @ Kalu	Cr. Appeal No.61 of 2010	Cr. Revision No.975 of 2012
6. Major Singh @ Mejor Singh @ Jaiky Singh	Cr. Appeal No.62 of 2010	Cr. Revision No.1011 of 2012

### **Arguments on behalf of the Petitioners**

6. Learned counsels for the petitioners have confined their arguments on the point of sentence as all the petitioners before this Court in three criminal revision applications are convicted only under Section 411 of Indian Penal Code. Learned counsels have also submitted that none of the petitioners have any criminal antecedent as is apparent from the learned trial court's judgment wherein, it was submitted that there was no previous conviction of any of the petitioners. Learned counsels have submitted that from the petitioner nos.1, 2, 3 and 4 in Criminal Revision No.924 of 2012, two, two, three and three mobile phones respectively were recovered. So far as petitioner in Criminal Revision No.1011 of 2012 is concerned, four mobile phones were recovered from his possession.

7. Learned counsel appearing on behalf of the petitioner in Cr. Revision No.1011 of 2012, has submitted that although the case was instituted for offence under Sections 392 and 411 of Indian Penal Code and the learned trial court had convicted the petitioner in Criminal Revision No.1011 of 2012 for offence under Sections 392 and 411 of Indian Penal Code, but the learned appellate court has acquitted him and the conviction only under Section 411 of Indian Penal Code was upheld.

Learned counsel appearing on behalf of the petitioner in Cr. Revision No.1011 of 2012 has specifically stated that the recovery of the mobile phones was prior to recording of his confessional statement and the learned appellate court found the conviction of the said petitioner under Section 392 Indian Penal Code unsustainable in the eyes of law and accordingly, the same was set aside. So far as other petitioners are concerned, they were ultimately convicted only under Section 411 of Indian Penal Code by the learned trial court and their conviction and sentence was confirmed by the learned appellate court.

8. The learned counsels submit that as per the prosecution case, altogether 65 mobile phones were looted and only aforesaid number of mobile phones were recovered from the possession of the petitioners, who are engaged in business of one or the other electronic items/mobile phones. Learned counsels submit that considering the facts and circumstances of these cases and the fact that there is no previous conviction of the petitioners and about 12 years have elapsed from the date of the incident and also the fact that the petitioners do not have any criminal antecedents, some sympathetic view may be taken in the present cases and the sentence be confined to the period already undergone in custody. They also submit that although the fine amount of Rs.10,000/- per head was imposed by the learned court below, but they are also ready to pay some amount as victim compensation/fine. They submit that victim compensation/fine may be directed to be remitted to Piyush Kumar Bora (P.W.1) of the case who was the real owner of the mobile phones and the recovered mobile phones were released in his favour by the learned court below. Learned counsels has submitted that all the petitioners have remained in custody for a period ranging between two months to four months.

#### **Arguments on behalf of the State**

9. Learned counsels appearing on behalf of the State, on the other hand, have submitted that there are concurrent findings of facts recorded by the learned court below and there is no scope for interference so far as conviction of the petitioners is concerned. However, they do not dispute the number of mobile phones, which were recovered from the possession of each of the petitioners as stated above by the learned counsels appearing on behalf of the respective petitioners. So far as sentence is concerned, the learned counsels for the State submit that it is for the Court to pass appropriate order on the same and they have nothing further to say, but they reiterate that the conviction of the petitioners may not be interfered with. They also do not dispute the fact that the petitioners have faced the rigors of criminal case for more than 12 years.

#### **Findings of this Court**

10. After hearing the learned counsel for the parties and after considering the materials on record, this Court finds that as per the prosecution case, the informants namely P.W.4 (Satish Kumar Dosi) and P.W.3 (Arbind Kumar Yadav) informed the officer-in-charge of Jaridih Police station that they were working as salesmen of Heena Corporation Sector IV, Bokaro and had taken 89 Nokia mobile phone handsets for sale and recovery of dues, after keeping them in three bags and left for Fusro, Kathara, Gomia and Jaridih on 24.01.2008 on their Hero Honda motorcycle. The informants gave details of selling 24 mobiles and collection of money from various shops at various locations. It was stated that they kept the remaining 65 mobiles and collected cash of Rs.73,061/- only and were returning from Fusro to Bokaro. At around 7 p.m, they reached ahead of Jaina More, Polytechnic College then two persons on a motorcycle dashed them and they threatened to kill them and fled away with the three bags containing collected money and 65 mobile

phones handsets worth Rs.1,75,000/- towards Fusro. They also took away the key of the motor cycle of the informants and the informants have further stated in the written report that they would make available the IMEI numbers of the looted mobiles within two days.

11. On the basis of the aforesaid information, Jaridih P.S. Case No.13 of 2008 dated 24.01.2008 was registered against two unknown persons under Section 392 of Indian Penal Code and after investigation, charge-sheet was submitted under Sections 392 and 411 Indian Penal Code against the present petitioners. Cognizance was also taken under the same sections against seven accused persons. Vide order dated 22.11.2008, the trial of one of the charge-sheeted accused namely, Mahesh Dosi was split up due to his absence and the remaining six charge-sheeted accused persons faced the trial and on the same date, charge was framed under Sections 392 and 411 of Indian Penal Code which was explained to the petitioners and they pleaded not guilty.

12. In support of the prosecution case, altogether 7 witnesses were examined including the two informants as well as the Investigating officer of the case.

13. P.W.1 Piyush Kumar Bora was the owner of Heena Corporation, the mobile shop of which the mobiles were looted. He has fully supported the prosecution case and has stated that P.W.3 and P.W.4 were his sales men. He identified the list of 89 mobiles, which he had given to sales men for sale and the said list was marked as Ext.1 with objection. He also identified the details of the collection money of the mobiles sold by sales men on 24.01.2008, whose details was identified as Ext.1/1. He identified the computer-generated mobiles of IMEI numbers of the looted mobiles and some of the details in the list were hand written. These details were marked as Ext.2. He had stated that he had purchased the mobiles from authorized distributor and

exhibited the computer-generated invoices of the purchase of the said mobiles which were marked as Ext.3 to 3/15. He has also stated that the police had recovered 22 pieces of mobile handsets out of the total looted mobile phone handsets and he identified all the 22 looted mobile handsets of his shop in T.I Parade and the T.I. Parade chart was marked as Ext.4. He was fully cross-examined.

14. P.W.2 is Kirit Kumar Bora. He has stated that the informants were the sales men of his shop and in his cross-examination, he has stated that he had heard about the incident from his staff.

15. P.W.3 and P.W.4 were the two informants and sales men of P.W-1 who have been examined and cross-examined and they have fully supported the prosecution case as narrated in the F.I.R.

P.W-3 had identified the motorcycle used for the commission of offence in T.I. Parade. He identified his signature and the T.I parade chart which was marked as Ext.6, but during cross-examination, he had not identified any of the accused persons. He has also stated that Mahesh Doshi, who was the co-accused and whose records were split up, is the own brother-in-law of Satish Dosi, who is P.W.4, the co-informant of the case.

16. P.W.5 is Harpreet Singh @ Rocky. He had signed the seizure list dated 13.03.2008 of the motor cycle, which was marked as Ext.7. However, in his cross-examination, he has not supported the prosecution case.

17. P.W.6 is Vicky Singh. He is another seizure list witness of the motorcycle. His signature was marked as Ext.7/1. He has also stated that he received a copy of the seizure list from Kuldip Singh @ Lucky who is his own brother and the seized motorcycle is in his name. This witness was declared hostile.

18. P.W.7 is the Investigating officer of the case, who has also supported the prosecution case and has stated that P.W-1

was the owner of Heena Corporation and P.W-1 had given him the details of the mobile handsets. He has supported the various seizure list of mobiles sets recovered from the possession of the petitioners as well as from the co-accused Mahesh Dosi and also exhibited the confessional statements of the accused persons. The first recovery was made from the house of Mejar Singh @ Jacky Singh and thereafter other recoveries were made from the possession of the other petitioners and co-accused Mahesh Dosi for which separate seizure lists were prepared. The seized mobiles were exhibited and marked as Exts.-MI to MI/XXI. The motorcycle used in the offence was of Kuldip Singh @ Lucky and it was stated by witness Vicky Singh that Mejar Singh used to use the motorcycle. The statements of the accused persons were recorded under Section 313 of Cr.P.C and the petitioners denied the allegations, but no evidence was adduced from the side of the defence.

19. The learned trial court passed a detailed judgment convicting Mejar Singh for offence under Sections 392 and 411 of Indian Penal Code and others petitioners and co-accused Mahesh Dosi only for offence under Section 411 of Indian penal Code. The submission of the convicts that they do not have any criminal antecedents and it was their first offence was also recorded by the learned trial court and not disputed by the A.P.P. The learned trial court convicted the petitioners for three years with fine of Rs.10,000/- for offence under Section 411 Indian Penal Code and further convicted Mejar Singh for offence under Section 392 Indian Penal Code with fine of Rs.10,000/-.

20. The learned appellate court after appreciation of materials on record acquitted Mejar Singh for offence under Section 392 Indian Penal Code and sustained the conviction of all the accused persons for offence under Section 411 Indian Penal Code, but so far as sentence is concerned, the learned appellate



court did not interfere with the sentences for offence under Section 411 Indian Penal Code.

21. Considering the facts that the occurrence is of 24.01.2008 and about 13 years have elapsed from the date of the incident and the looted mobile phones which were recovered from the possession of the petitioners were to the extent of 2 to 7 and the petitioners do not have any criminal antecedent and they have also remained in custody in connection with the present case for a period ranging from 1½ to 4 months as submitted by the learned counsels for the petitioners, this Court is of the considered view that sentences are required to be modified for securing the ends of justice. The details of the mobiles recovered from the possession of the petitioners and their period of custody are as under:

<b>Petitioners</b>	<b>No. of mobiles recovered</b>	<b>Period of custody during trial &amp; Criminal revision stage</b>
1. Pappu Kumar Kashyap	2	12.03.2008 to 25.04.08 & 03.12.2012 to 11.12.2012
2. Pappu Kumar Agrawal	3	12.03.08 to 17.04.08 & 03.12.2012 to 11.12.2012
3. Shiv Kumar Gupta	3	12.03.08 to 25.04.08 & 03.12.2012 to 11.12.2012
4. Dilip Kumar Verma	2	12.03.2008 to 17.04.08 & 03.12.2012 to 11.12.2012
5. Raja Singh @ Kalu	7	12.03.2008 to 23.06.08 & 03.12.2012 to 14.12.2012
6. Major Singh @ Mejoor Singh @ Jaiky Singh	4	12.03.08 to 23.06.08 & 03.12.2012 to 13.12.2012

22. Considering the aforesaid aspects of the matter, this Court is of the view that the ends of justice would be served, if the sentence of the petitioners is limited to the period already undergone in judicial custody by them in connection with the present case with additional fine of Rs.25,000/- each to be deposited before the learned court below within a period of 4

(four) months from the date of communication of this order to the learned court below.

23. The learned trial court is directed to remit the entire fine amount of Rs.35,000/- each (Rs.25,000/- plus Rs. 10,000/-) so deposited by the petitioners to Piyush Kumar Bora (P.W.-1), who is the victim of the offence and owner of the mobile phones involved in the present case, upon due identification. In case, the fine amount is not deposited within the stipulated time frame, the petitioners would serve the sentences as already imposed by the learned appellate court and their bail bonds will be cancelled. If the fine amount is deposited within time, the petitioners and their bailors will be discharged from their liability under the bail bonds furnished by them.

24. There is one more co-convict in the present case namely Mahesh Dosi, who has not joined the petitioners in these batch of criminal revision applications, the learned court below is directed to proceed in connection with him in accordance with law.

25. Accordingly, with the aforesaid findings and modification the sentences of the petitioners, this criminal revision application is hereby **disposed of**.

26. Pending interlocutory application, if any, is closed.

27. Let the lower court records be sent back to the court concerned.

28. Let this order be communicated to the learned court below through 'FAX/E-mail'.

(Anubha Rawat Choudhary, J.)