

% + **CRIMINAL REVISION PETITION No. 245/2008**

versus

The State (N.C.T.) of Delhi Respondent
Through: Mr.Sanjay Lau, Additional Public
Prosecutor for respondent-State with
S/ Uma Dutt.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

Sunil Gaur, J. (Oral)

1. Petitioner is challenging his conviction under Section 411/34 of the IPC which has been recorded by the trial court and affirmed by the appellate court in case titled as 'State vs. Jitinder etc.' in FIR No. 130/2002, registered at police station Mangolpuri, Delhi. Sentence of rigorous imprisonment of one year has been imposed upon the petitioner for the offence under Section 411/34 of the IPC.
2. The factual matrix noted by the court below is as under:-

"PW-2 Rajesh Kumar, complainant in this who has deposed that on the night of

13/02/2002 he along with his wife and daughter had gone to house of his inlaws at Uttam Nagar after locking his house and in the morning of 14/02/2002, he received a telephone call from his friend Sushil Kumar that the lock of his house was broken on which he reached to his house and found the articles lying scattered. He further deposed that he called the police on which PCR van came to his house. He further deposed that his wife came on the next day and she checked for the stolen articles on 15/02/2002 and 16/02/2002 and on 17/02/2002 she made his complaint to PS Mangol Puri which is Ex. PW2/A mentioning therein the articles stolen from his house. He further deposed that about 4/5 days of the theft he received an information from a constable of PS Mangol Puri that his stolen articles have been recovered and he went to the court to identify the recovered articles. He had also identified the recovered articles Ex.P1 to P14 in the court."

3. It is the prosecution case that after the arrest of the petitioner and pursuant to his disclosure statement, petitioner had got recovered stolen articles i.e. one ladies ring of yellowish metal and one pair of jhumka of yellowish colour from the suit case and also two cut pieces of black and tobacco colour and two cut pieces of shirts of red and blue colour from his house.

4. After recording of the evidence, the incriminating circumstances were put to the petitioner by the trial court by

invoking provision of Section 281 of the IPC and thereafter, on the basis of the evidence recorded, the conviction and sentence as noticed above, has been imposed upon the petitioner, which has been upheld in appeal.

5. Upon hearing both sides and on perusal of the record, I find that the conviction of the petitioner is being assailed by the learned counsel for the petitioner on the ground that the recovery made i.e. the ear ring was not produced before the concerned Metropolitan Magistrate at the time of identification proceedings. Learned Additional Public Prosecutor for respondent-State states that this point was not urged before the court below. In view thereof, the petitioner is precluded from raising this point before this Court.

6. Another submission made by the petitioner's counsel is that the petitioner's statement under Section 313 of the Code of Criminal Procedure was not recorded, which vitiates the trial and to support this contention, learned counsel for the petitioner relies upon the decisions in '*Lallu Manjhi & Anr. Vs. State of Jharkhand*' 2003 (1) JCC 137 and '*Asraf Ali vs. State of Assam*' 2008 (3) C.C.Cases (SC) 363.

7. To rebut aforesaid submission of petitioner's counsel, learned Additional Public Prosecutor for respondent-State has drawn the attention of this Court to Section 260 of the Code of

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Criminal Procedure which mandates that the procedure adopted for the trial of offence under Section 379/380/411 of the Indian Penal Code has to be summary one which does not require recording of statement under Section 313 Cr.P.C. of the accused.

8. Now the stand taken by the learned counsel for the petitioner is that the petitioner was tried for the offence under Section 457 of the IPC also which is not within the sweep of Section 260 of the Cr.P.C. Upon perusal of the revision petition, it is noted that this point has not been urged to assail the conviction of the petitioner herein. In any case, petitioner does not suffer any prejudice because he has not been convicted for the offence under Section 457 of the IPC. On this procedural curable technicality, the conviction of the petitioner cannot be faulted with, as conviction of the petitioner is based upon the evidence on record.

9. Finally, learned counsel for the petitioner states that the petitioner ought to have been granted benefit of Section 360 Cr.P.C. as he has clean antecedents and that he is the sole bread earner of his family.

10. Learned Additional Public Prosecutor for respondent-State has placed on record the Status Report which indicates

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involvement of petitioner in this case alone and it does not disclose if the petitioner has been convicted in any other case.

11. Finding no infirmity or illegality in the impugned conviction of the petitioner, I do find that on the question of sentence, the plea of the petitioner for grant of probation ought to have been considered by the court below. The fact of petitioner not having any criminal back ground and of his being the sole bread earner have been noticed in the *Order on Sentence* by the trial court.

12. Keeping in view that this incident is of the year 2002 and much water has flown thereafter, indeed it would not be in the interest of justice to now send the petitioner behind bars to serve the sentence awarded. Therefore, in the facts and circumstances of this case, I find that grant of probation to the petitioner under Section 360 of the Cr.P.C. would be an appropriate course to be adopted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as useful and self-reliant members of the society without subjecting them to deleterious effects of jail life.

13. Accordingly, it is directed that the petitioner be released on probation for a period of one year on his furnishing probation bond in the sum of Rupees Fifteen Thousand only with one surety in the like amount. Petitioner is directed to appear before the concerned court of Metropolitan Magistrate at District

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Courts, Rohini, Delhi for furnishing the probation bonds for good behaviour and in the event of default, petitioner shall be liable to undergo the sentence awarded.

14. With aforesaid directions, this petition stands disposed of. Copy of this order be sent to the trial court for compliance and report.


Sunil Gaur, J

July 29, 2011

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