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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order Reserved on: September 23, 2011
Order Pronounced on: October 21, 2011

+ **Crl. Rev.(P) No.631/2008**

SURJEET SINGH Petitioner
Through: Mr.S.Nanda Kumar, Mr.Satish
Kumar, Mr.R.Satish Kumar and
Ms.Seema Singh Sukla,
Advocates

versus

STATE OF NCT DELHI Respondent
Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for State.

+ **Crl. Rev.(P) No.635/2008**

GURBACHAN SINGH & ORS. Petitioners
Through: Mr.Subhash Chandra, Advocate

versus

THE STATE Respondent
Through: Mr.Rajesh Mahajan, Additional
Standing Counsel (Crl.) for State.

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?
- No.

Signature Not Verified

Digitally Signed By: AMULYA
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the digital data is as per the physical
file and no page is missing.

Crl. Rev.(P) Nos.631/2008 & 635/2008

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SUNIL GAUR, J.

1. The impugned order of 11.11.2008 in the above two captioned revision petitions is common one and pertains to one incident. With the consent of parties, both these petitions were heard together and are being disposed of by this common order.

2. Petitioners—Gurbachan Singh @ Raju and Surjeet Singh were accused of committing theft of truck No. DEL 7405 by getting it towed away from *Azadpur Mandi*, Delhi, by a crane hired from one Mohd. Kalam, who had deputed his crane with a driver Mohd. Vakil and before the said truck could be taken out of the gate of the *Mandi*, the truck owner-Vishwanath, noticed that his truck was being towed away by the crane he raised the alarm and the petitioners present in the truck which was towed away were apprehended at about 8:00 p.m. on 17.5.1999.

3. Both the petitioners had faced trial for the offence under Section 379/34 of the IPC in FIR No. 282/99, registered at Police Station Jhangir Puri, Delhi in relation to this incident and though Vishwnath (PW-3), the owner of the truck, which was being stolen away, had not supported the prosecution version but the trial court had relied upon the deposition of Mohd. Kalam (PW-2) owner of the crane who had stated that the petitioners had hired his crane for ₹800/- and Mohd. Vakil, driver of the crane, had corroborated it, to convict the petitioner for the offence of attempting to steal the truck in question and had inflicted the punishment of rigorous imprisonment for one year with fine, which was unsuccessfully challenged in appeal.

4. The same very contentions which were advanced before the Appellate Court have been reiterated by learned counsel for the petitioners. The contradiction regarding the time of this incident or about the hire charges being paid or not pale into insignificance in view of the Crl.Rev.(P) Nos.631/2008 & 635/2008

fact that the petitioners were arrested at the spot and so it becomes immaterial that the complainant PW-3 has not stated that the petitioner was present in the truck which was being stolen away. However, he had narrated as to how this incident happened. In any case there is clinching evidence of driver of the crane i.e. Mohd. Kalam (PW-2) which sufficiently incriminates the petitioners.

5. I do not find any substance in the contention of the petitioners that simply because the arrest memo etc. are not witnessed by any independent person, the investigation of this case becomes tainted, as now- a-days public persons seldom come forward to become witnesses and so on this account, the prosecution case cannot be thrown out. Simply because owner of the truck has omitted to depose that the petitioners were inside the truck which was being stolen away, the otherwise reliable evidence of the crane driver PW-2 cannot be discarded.

6. Upon perusal of the impugned order, I find that it is well reasoned and has aptly dealt with the submissions advanced on behalf of the petitioners and I find no illegality or infirmity in the impugned order. Thus the conviction of the petitioners is upheld. However, on the quantum of sentence, I find that the trial court had called for the report of the Probation Officer who had recommended grant of probation to the petitioner-Surjeet Singh. Still, the trial court did not deem it proper to extend the benefit of probation to the petitioner in view of the nature of offence committed and the fact that 5-6 cases were pending against petitioner-Gurbachan Singh.

7. It does find mention in the order on the point of sentence of the trial court that petitioner-Gurbachan Singh had remained behind bars for about one and half months and that he is the sole bread earner of his

family and has to maintain his parents. Regarding petitioner-Surjeet Singh it stands noted in the said order that he was aged 51 years and that he has family responsibilities to shoulder and has to maintain his parents and that he had also remained behind bars for about a fortnight. Appellate Court has not considered the feasibility of releasing the petitioners on probation as no submissions were made on the quantum of sentence aspect.

8. It cannot be lost sight of that this incident took place a decade ago and that there is no previous conviction to the discredit of the petitioners and that they have faced the agony of these protracted proceedings. This Court has been assured by learned counsel for the petitioners that a long period of sufferance of facing these proceedings and period of imprisonment already suffered would surely serve as a deterrent. So, to now send the petitioners behind bars to serve reminder of the sentence, would serve no purpose. Thus, instead of granting probation after a lapse of considerable time, the appropriate course to adopt would be to reduce the substantive sentence imposed upon the petitioners, to the period already undergone by them.

9. In the light of what is observed above, both the petitions are disposed of, while maintaining the conviction of the petitioners, the substantive sentence is reduced to the period already undergone by them, subject to deposit of enhanced fine of ₹5000/- each before the trial court within four weeks, failing which the petitioners shall have to undergo SI for five months each.

10. The trial court be apprised of this order to ensure its compliance.


(SUNIL GAUR)
JUDGE

October 21, 2011

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