

CRR-1510-2006 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1510-2006 (O&M)

Date of Decision: August 26, 2015

Dhan Singh and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Sunil Saharan, Advocate for
Mr.Jitender Dhanda, Advocate
for the petitioners.

Mr.Kuldeep Tiwari, Addl.A.G.Haryana.

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

Naresh Kumar Sanghi, J.(Oral)

Challenge in this criminal revision petition is to the judgment, dated 14.07.2006, passed by learned Sessions Judge, Bhiwani, whereby the appeal filed by the petitioners, Dhan Singh, Gobind and Anil Kumar, challenging their conviction and sentence for the offence punishable under Section 411, IPC, recorded by learned Judicial Magistrate Ist Class, Bhiwani, was dismissed.

Mr.Sunil Saharan, learned proxy counsel for the petitioners, submits that he has the instructions to argue the present case. He further submits that he has also the instructions to state at Bar that in view of the concurrent findings of both the Courts below, petitioners are not challenging their conviction for the offence punishable under Section 411, IPC. However, in view of the fact that the occurrence is of the month of August 2001; none of the petitioners is a previous convict or required in any other case; petitioners Gobind and Anil Kumar have undergone substantive sentence of 19 days each while petitioner No.1 Dhan Singh has suffered incarceration for 29 days; the fine imposed was deposited before the learned trial Court and that during pendency of the trial, appeal and the present criminal revision petition, the petitioners remained on bail but none of them misused the said concession, he prays for leniency in the quantum of sentence only.

Learned counsel for the State has not controverted the factual aspects raised by the learned counsel for the petitioners. However, he submits that though the offence for commission of theft by the petitioners could not be substantiated yet both the Courts below have held that petitioners had retained the golden

ornaments of the informant and, as such, the substantive sentence awarded to the petitioners is adequate. He has produced three separate affidavits of the Superintendent, District Jail, Bhiwani, to show the period of incarceration suffered by each petitioner which are taken on record.

I have heard the learned counsel for the parties and with their able assistance gone through the material available on record.

Brief facts of the case are that at the behest of Jai Bhagwan (PW1), first information report for commission of theft in his (Jai Bhagwan) house was registered on 22.08.2001 for the offence committed on 31.07.2001. During the course of investigation the petitioners were arrested and certain gold ornaments belonging to Jai Bhagwan (PW1) were recovered. After completion of the investigation, the charge-sheet (report under Section 173, Cr.P.C.) for the offences punishable under Sections 380 and 457, IPC, was presented. However, the learned trial Court proposed to frame the charge for the offence punishable under Section 411, IPC.

On the basis of the prosecution evidence led, the learned trial Court held the petitioners guilty for having

committed the offence punishable under Section 411, IPC, and sentenced each one of them to undergo rigorous imprisonment for one year besides payment of fine of ₹500/- (Rupees five hundred only). In default of payment of fine, the defaulter had to undergo further rigorous imprisonment for one month.

The appeal filed before the Court of Session was dismissed.

After perusing the records received from the Courts below and going through the material available on record with the assistance of learned counsel for the parties, this Court also finds that the conviction of the petitioners for the offence punishable under Section 411, IPC, is well based and, as such, no interference is called for so far as conviction is concerned. However, there appears to be substance in the submissions of the learned counsel for the petitioners when it was contended that the petitioners were held guilty for the offence punishable under Section 411, IPC; none of the petitioners is a previous convict nor required in any other case; petitioners Gobind and Anil Kumar each has undergone 19 days of imprisonment while petitioner Dhan Singh has suffered incarceration for 29 days; the petitioners have no objection if the gold articles alleged to have

been recovered from them are restored to real claimant/informant in accordance with the settled norms and that during the course of trial, appeal and the present criminal revision petition, they (petitioners) were on bail and the said concession was not misused, therefore, after agony of approximately 14 years, some concession in the substantive sentence can be extended to them. Hence, the substantive sentence of each of the petitioners is reduced to rigorous imprisonment for three months. The fine imposed by learned trial Court is maintained.

In view of the above modification in the order of sentence, the present criminal revision petition is disposed of.

Registry is directed to send copy of this order to learned trial Court for issuance of appropriate orders for taking the petitioners into custody for serving out the remaining sentence.

If the ornaments belonging to informant recovered from the petitioners have not been restored to the informant/complainant/ aggrieved person, then after notice the same be returned to him, as per norms.

August 26, 2015
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(NARESH KUMAR SANGHI)
JUDGE