

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

CRR-2435-2006
Date of Decision: August 26, 2015.

SUDAMA@ DAMA

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE M.M.S.BEDI

Present: None for the petitioner

Mr.Charanjit Singh Bakshi,Addl.A.G.Haryana

M.M.S.BEDI, J.(Oral)

The petitioner is named Sudama. He is alleged to have stolen the idol of Lord Krishna made of black stone from Kapil Muni Temple along with his two associates.

The story of the prosecution is that Ved Parkash Pujari of above said Mandir lodged an FIR alleging that on 12.05.1993 Mukesh @ Kalu, Jalbir @ Jillu along with the petitioner came on Rajdoot motorcycle and stolen the above said idol which was of archeology value and was registered with Archeology Department. The said idol was recovered from the possession of co-accused Chander Bhan. The CJM Kaithal sentenced the petitioner to undergo imprisonment for a period for three years and pay fine of Rs.1,000/- and for non-payment of fine, rigorous imprisonment for three months vide judgment dated 13.08.2003.

It is pertinent to mention that co-accused Jalbir and Mukesh being dead and Chander Bhan having been convicted vide order dated 04.03.2002, the petitioner was tried and convicted separately. The conviction of the petitioner was upheld by the lower Appellate Court while confirming the conviction and sentence of Chander Bhan co-accused as well.

A perusal of order passed by Appellate Court indicates that from the

testimony of Ved Parkash Pujari who has allegedly seen the petitioner along with other two accused on the early hours of the day and on the basis of disclosure statement made by the petitioner and his co-accused before DW2 ASI Vishnu Dutt, it is established that the petitioner had handed over the statute for sale to Chander Bhan and recovery was got effected. The Courts below were also convinced the recovery having been made on the disclosure statement of the co-accused, the petitioner was liable for conviction under Section 380 IPC.

When the present revision petition was filed, there was delay of 180 days in filing of the revision petition. The petitioner has undergone total sentence of one year and 10 months as on 25.08.2015. Co-accused of the petitioner namely Chander Bhan was convicted and sentenced for having committed offence under Section 411 IPC. As the petitioner absconded and avoided trial with co-accused, he was declared proclaimed offender vide order dated 26.02.2002 and was again arrested in June 2003. The petitioner was convicted on the statement of co-accused Chander Bhan that petitioner along with other two accused had given him the stolen idol of Lord Krishna. The confession of the petitioner made before ASI Vishnu Dutt PW2 has been made basis of the conclusion that the petitioner along with others had committed theft.

Since the recovery of idol has not been effected from the petitioner and he has been convicted solely on the basis of confessional statement of co-accused Chander Bhan made in police custody, a controversy would arise whether he would be entitled for benefit of doubt. However, since the conviction of the co-accused has been upheld and the petitioner has faced the ordeal of the trial Court since 1993, he being jointly liable for the offence committed with his second co-accused; his co-accused having made confessional statement; the co-accused of the petitioner having been committed offence under Section 411 IPC; I am of the opinion that ends of justice would adequately met in case

sentence of imprisonment of petitioner is reduced from the period of three years to a period of two years. In the present case the recovery has been effected on the basis of disclosure statement of the petitioner Exhibit P-4, disclosure statement of Mukesh Exhibit P-5, disclosure statement of Jalbir Exhibit P-6. The statements would not be hit by provisions of Section 25 of the Indian Evidence Act as the disclosure statement made by the petitioner has led to the recovery which is admissible under Section 27 of the Indian Evidence Act. The conviction of the petitioner can be upheld as being based on the relevant and admissible evidence.

This revision petition is disposed of by upholding the conviction of the petitioner under Section 380 IPC. However, sentence of imprisonment is reduced from the period of three years to the period of two years. The sentence regarding fine is maintained. In case the fine is not paid he would be required to undergo further simple imprisonment for 15 days.

Petitioner may be arrested to complete the remaining sentence.

August 26, 2015.
TSG

(M.M.S.BEDI)
JUDGE