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

Date of Decision: February 13, 2015

+ **CRL.M.C. 370/2015 & CrI.M.A. 1474/2015**

SUNNY SETHI Petitioner

Through: Mr. B.K. Jha, Advocate

versus

STATE OF NCT OF DELHI Respondent

Through: Mr.Parveen Bhati, Additional
Public Prosecutor for respondent-
State with SI Gajender Singh

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Vide order of 6th January, 2014 petitioner was released on probation for the offence under Section 411 of IPC in FIR No.642/2004 registered at P.S. Rajouri Garden, Delhi, subject to petitioner maintaining the good conduct. After being released on probation, petitioner was caught in five cases of snatching and out of these five cases, in one case, he was acquitted and in three cases, he was discharged, but in the fifth case i.e. FIR No.390/2014 registered at P.S. Tilak Nagar, Delhi for the offence under Sections 392/34 of IPC, petitioner has not been identified in the Test Identification Parade. Trial court vide order of 1st August, 2014 has directed petitioner to serve the sentence of rigorous imprisonment for two years in FIR No.642/2004 on account of his

breaching the condition of probation i.e. of maintaining good conduct.

Aforesaid order of 1st August, 2014 has been maintained by the revisional court vide the impugned order of 1st December, 2014. At the hearing, learned counsel for petitioner had submitted that after trial court's order of 1st August, 2014, petitioner is behind bars for the last about nine months and the discharge of petitioner in three cases and acquittal in the fourth case, does not justify the cancellation of probation granted to petitioner as even in the fifth case, there are no chances of petitioner being convicted as in the Test Identification Parade, star witness of prosecution has not identified petitioner as accused. Thus, it is prayed that the impugned orders be quashed and petitioner be released from jail forthwith.

Learned Additional Public Prosecutor for State supports the impugned order and submits that there is no illegality or infirmity in it. Learned Additional Public Prosecutor asserts that it cannot be presumed that petitioner would not be convicted in the fifth case for the offence under Sections 392/34 of IPC, which is a grave offence and so, this petition deserves to be dismissed.

Upon hearing and on perusal of the impugned orders and the material on record, I find that petitioner is a graduate and is a middle aged person, who is said to be dealing in selling of cakes.

During the course of hearing, it was submitted by learned counsel for petitioner that it is the question of livelihood of petitioner and his family and so, the sentence of two years awarded for the offence under Section 411 of IPC deserves to be reduced to the period already undergone by him as the incident was of the year 2004.

In the facts and circumstances of this case, this Court finds that petitioner has already faced the agony of trial and appeal proceedings in FIR No.642/2004 for the last about one decade and has already remained behind bars for a period of about nine months and in view of the background of petitioner, the sentence of two years awarded to petitioner in FIR No.642/2004 registered at P.S. Rajouri Garden, Delhi is reduced from two years to one year while maintaining the sentence of fine.

With aforesaid modification, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 13, 2015

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