

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

RESERVED ON : 30th OCTOBER, 2015

DECIDED ON : 5th NOVEMBER, 2015

+ CRL.REV.P. 454/2014

IKRAR

..... Petitioner

**Through : Mr.Javed Ahmad, Advocate with
Mohd.Ovais, Advocate.**

Versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through : Mr.Amit Ahlawat, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant Revision Petition has been filed by the petitioner – Ikrar to challenge the legality and correctness of a judgment dated 16.05.2014 of learned Addl. Sessions Judge in Crl.A.No.45/14 whereby findings of the learned Chief Metropolitan Magistrate on conviction and sentence in case FIR No.153/2006 under Sections 392/34 IPC vide orders dated 11.03.2014 and 16.04.2014 were upheld. The petitioner was sentenced to undergo Rigorous Imprisonment for five years with fine ₹15,000/- under Sections 392/34 IPC. It is relevant to note that the

petitioner was acquitted of the charge under Section 411 IPC and the State did not challenge the said acquittal.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 20.04.2006 at 08.34 pm at road No. 56, Railway bridge, Talcum Colony, Vivek Vihar, the petitioner in furtherance of common intention with his associates Shakir and Wasim committed robbery upon Sukh Lal and deprived him of his valuable articles and cash ₹6,000/- when he was travelling in TSR No. DL-1RG-5780. The accused was arrested at the spot whereas his associates succeeded to flee. Wrist watches, purse and other documents belonging to the complainant were thrown on the footpath and were collected by the complainant subsequently. Subsequently Shakir and Wasim were apprehended in some other case and on the basis of their disclosure statements, they were implicated in this case. Statements of the witnesses conversant with the facts were recorded and after completion of investigation, a charge-sheet was filed against the appellant and his associates for committing offences under Sections 392/411/34 IPC. To establish its case, the prosecution examined twelve witnesses in all. In 313 Cr.P.C. statements, the accused persons denied their involvement in the crime and pleaded false implication; no evidence in defence was produced. The trial resulted in

conviction. The appellant challenged the conviction and sentence in Crl.A.No.45/14 which resulted in its dismissal. Hence, the present revision petition.

3. On perusal of the statements of the complainant – Sukh Lal and his wife - PW-2 (Muktiyari) it stands established that while travelling in the TSR belonging to the accused Wasim, they were deprived of their valuable articles and cash lying in a brief case which they were carrying with them that time. The petitioner was arrested at the spot and the articles taken out of the brief case were thrown on the road which were collected and seized. Both PW-1 (Sukh Lal) and PW-2 (Muktiyari) had no prior animosity against the petitioner to falsely implicate him in this case. He was duly identified in the Court as the perpetrator of the crime. Merely because the petitioner and his associate were acquitted of the charge under Section 411 IPC, prosecution case cannot be thrown away overboard. This Court has no reason to take a different view from the concurrent findings recorded by the Courts below about the role attributed to the petitioner in the commission of crime. It stands established that the complainant and his wife were travelling in the said TSR. Cash and other articles lying in brief case were taken out during the journey by the petitioner and his associates. It was apparently a case of ‘theft’. PW-1 (Sukh Lal), the

complainant, admitted in the cross-examination that on checking the suit case, he found that his purse and wrist watches were missing from it. After alighting at the flyover due to jam, they informed about it to the police. He found certain articles i.e. wrist watches and purse lying on the road; lifted them and handed over to the police. He further admitted that the accused persons had not extended any threat to them. PW-2 (Muktiyari), in the cross-examination, admitted that after they had alighted from the TSR, they suspected something amiss. On opening the suit case, they found that certain articles had been taken out of it. She had seen the accused taking out the articles from the purse. She caught hold of the petitioner Ikrar at the spot while others in the TSR fled away throwing the articles there.

4. Nothing has emerged in the statements of the prosecution witnesses if any force whatsoever was used by the petitioner to deprive them of their valuable articles and cash in the TSR. No threat was extended at any stage at the time of alleged incident. The petitioner along with his associates had 'stolen' certain articles from the brief case which the complainant was carrying in the TSR. When they became suspicious and checked/opened it, they found certain articles 'missing'. On raising the alarm, petitioner was arrested at the spot and the others succeeded to

run away. From the facts and circumstances of the case, it can be concluded that the petitioner was guilty of the offence under Section 379 IPC. Ingredient of Section 392 IPC are not attracted and proved in this case. When no force or show of force is found to have been used in the committing of theft etc., the offence of robbery cannot be said to have been committed.

5. In the light of above discussion, conviction is altered from 392/34 IPC to Section 379/34 IPC. Nominal Roll dated 28.10.2014 reveals that the petitioner has already undergone eight months and nineteen days incarceration besides remission for one month and ten days as on 27.10.2014. It further reveals that he is not a previous convict and is not involved in any other criminal case. His overall jail conduct is satisfactory. The conviction has been altered to Section 379 IPC which is punishable with maximum imprisonment for three years. Considering the facts and circumstances of the case, sentence order is modified and the petitioner shall undergo RI for two years with fine ₹1,000/- under Section 379 IPC. In case of non-payment of fine, the petitioner shall suffer default sentence i.e. SI for three months.

6. The appeals stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

NOVEMBER 05, 2015 / tr