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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 470/2016
DANISH @ CHINTU Petitioner
Through: Mr. Rajesh Kumar, Adv.
versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Mukesh Kumar, APP for State.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
19.07.2016

Crl. M.A. 10687/2016

Delay in re-filing is condoned.

Application is disposed of.

Crl. M.A. No. 10686/2016

Delay condoned.

Application is disposed of.

Crl. M.A. 10685/2016

Allowed, subject to all just exceptions.

Application is disposed of.

Crl. Rev. P. 470/2016

Vide order dated 30th September, 2015 petitioner was convicted by the trial court under Section 411 IPC, in the case arising out of FIR 325/15

registered at police station Saket and vide order on sentence dated 5th October, 2015 he has been sentenced to undergo rigorous imprisonment for three years along with fine of ₹3,000/- and in default of payment of fine to undergo further imprisonment for two months. Benefit of Section 428 Cr.P.C. has also been given to him.

Aggrieved by his conviction as also the sentence awarded by the trial court, petitioner preferred Criminal Appeal 30/2015 before the Sessions Judge (Saket Courts), which has been dismissed vide order dated 27th January, 2016.

That is how the petitioner is before this Court by way of present revision petition under Section 397 read with Section 401 Cr.P.C.

It is a trite law that scope of interference by the High Court, in exercise of its revisional powers, is limited. The revision petition cannot partake status of an appeal. High Court cannot sift and weigh the evidence on record and render its findings as against the two concurrent findings of the court below. Both the courts below have marshalled the evidence, and carefully have returned a colonial finding of guilt by believing the statements of recovery witnesses. Revisional Court can interfere only if a manifest error of law or miscarriage of justice is demonstrated or it is shown

that there had been some procedural illegality during the trial.

In this case, petitioner was caught red handed at the police picket with a stolen motorcycle bearing no. MH-14BU-1013 on 15th March, 2015 at about 09:52 pm. Sufficient evidence has been led by the prosecutrix to prove that the vehicle was a stolen vehicle and recovered from the petitioner's possession. Petitioner had failed to show any document of the vehicle which he was found driving at the time of checking. Recovery witnesses have been examined and their testimonies have been found trustworthy by both the courts below. The plea taken by the petitioner, that non-joining of public witnesses is fatal to the case, has rightly been rejected by the trial court as well as the appellate court. It is the matter of common knowledge that it is hard to find public witnesses in metropolitan cities like Delhi as the witnesses avoid joining the investigation in order to avoid their subsequent harassment of appearing in court and also from the accused.

At this stage, learned counsel for the petitioner submits that challenge to the conviction of the petitioner on merits is given by. He has prayed leniency in the sentence. It is submitted that maximum sentence of three years has been awarded to the petitioner. Learned APP submits that petitioner is involved in as many as 26 cases. Learned counsel for the

petitioner submits that out of the 26 cases, petitioner has already been acquitted in 12 cases. He further submits that petitioner is 25 years of age and has to be given opportunity to reform himself.

Keeping in mind the totality of the circumstances, while upholding the conviction of the petitioner under section 411 IPC, his sentence is reduced to two years. However, sentence of fine is maintained as it is.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

JULY 19, 2016

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