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

+ CRL.REV.P. 403/2016 & CrI.M.(B) No.1109/2016

VINOD

..... Petitioner

Through: Mr. B.K. Jha, Advocate

versus

THE STATE (NCT) OF DELHI

..... Respondent

Through: Ms. Neelam Sharma, APP with  
SI:Narendra, PS:Rajouri Garden, New  
Delhi

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **09.08.2016**

Vide order dated 23<sup>rd</sup> January, 2016, the petitioner was convicted under Section 379 Indian Penal Code ('IPC'), 1860 and vide Order on Sentence dated 30<sup>th</sup> January, 2016 passed by the learned Metropolitan Magistrate-02/West Delhi, he was sentenced to undergo simple imprisonment for two years and pay fine of Rs.2,000/-, and in default of payment of fine to undergo simple imprisonment for one month.

Aggrieved by his conviction, as also Sentences handed down to him by the trial Court, the petitioner preferred CA No.13/16 before the Additional Sessions Judge-05 West Delhi, which has been disposed of by the impugned judgment dated 9<sup>th</sup> May, 2016. Conviction of the petitioner has been upheld, whereby sentence has been reduced to one year from two years.

Being aggrieved by the impugned judgment, the petitioner has preferred this revision petition under Section 397 of the Code of Criminal Procedure, 1973 ('The Code', for short).

As per the prosecution, on 27<sup>th</sup> June, 2014, PW-1 Anil Kumar, was travelling in a DTC bus, plying on Route No.567 and when the bus reached at Batra Hospital, Ring Road at about 4.30 p.m., the petitioner took out the purse of PW-1 from his hip pocket. PW-1 raised alarm and apprehended the petitioner. He telephoned at No.100, pursuant whereof DD No.42-A was recorded and handed over to PW-3, Head Constable Har Sahay, for investigation, who, along with PW-4, Constable Ghanshyam, reached the spot and recorded the statement (Ex.PW-1/A) of PW-1, resulting in registration of FIR No.706/2014 (Ex.PW-2/A) Petitioner was arrested and site plan Ex.PW-3/B was prepared. The purse was recovered from the petitioner and seized vide Seizure Memo Ex.PW-1/13. Later chargesheet was filed.

Charge under Section 379 IPC was framed on 20<sup>th</sup> August, 2014 by the trial Court to which petitioner pleaded not guilty and trial started. Prosecution lead evidence and examined aforesaid witnesses. Statement under Section 313 Cr.P.C. of the petitioner was recorded on 6<sup>th</sup> January, 2016, wherein the entire incriminating material, which had come on record in evidence, was put to him. The petitioner denied the incident but did not deny his presence in the DTC bus. He alleged that he was standing behind the Complainant (PW-1) and an altercation broke out between them, as a consequence whereof PW-1 forcibly took him to the Police Station and falsely implicated him in this case. The petitioner did not lead any defence evidence.

The trial Court meticulously scrutinised the evidence on record, more particularly the statement of PW-1 and found it to be trustworthy and reliable. The statements of PW-3 and PW-4 were also found trustworthy. The petitioner was convicted on the basis of the statement of PW-1. The trial Court has also taken note of the fact that the petitioner was apprehended at the spot itself which fact was corroborated from his defence taken in his statement under Section 313 Cr.PC.

The Appellate Court has also scrutinised the statement of the petitioner and other witnesses meticulously and has concurred with the findings returned by the trial Court. The Appellate Court has also found the testimony of PW-1 trustworthy and reliable, sufficient enough to conclude beyond shadow of reasonable doubt that petitioner had picked the pocket of PW1. Learned counsel for the petitioner contended before the Appellate Court that there were material contradictions in the statements of the witnesses since PW-2, ASI Sansar Pal had stated that constable Ghanshyam handed over one *Rukka* to him at 7:40 pm for registration of FIR, which had been sent by PW3 Head Constable Har Sahay whereas PW-4 stated in his cross-examination that he took the *rukka* for registration of FIR at about 4:30 pm. The Appellate Court has noted that the *rukka* was completed at 7:30 pm and DD No.42-A was registered at 7:40 pm. The Appellate Court concluded that the discrepancies with regard to the timing given by the witnesses was not a material contradiction so as to disbelieve the victim PW1 Anil Kumar. Learned counsel for the petitioner also contended before the Appellate Court that the version of PW-1 had remained uncorroborated by any independent public witness. This amount has also not been found convincing by the Appellate Court, rightly so, as it is a matter of common

knowledge that it is hard to find independent public witnesses in criminal cases in metropolitan towns like Delhi, as the witnesses avoid joining the investigation in order to avoid their subsequent harassment from the accused and also taking rounds of court during the trial. Testimony of a victim, if found trustworthy, can be relied upon, without any corroboration from any independent witness.

I have heard the arguments and perused the material placed on record including the statement of PW1 and find the view taken by the trial Court as well as the Appellate Court to be a possible view. It is trite to say that concurrent findings of the courts below cannot be interfered by the High Court, in exercise of its supervisory jurisdiction within the meaning of Section 397 Cr.P.C., unless it is perverse and based on no evidence or violates any legal provisions. In exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal and substitute a finding against what has been arrived by the courts below after marshalling the evidence. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioner has failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

Trial court awarded sentence of two years which has already been reduced to one year by the Appellate Court. No further interference is required in the sentence keeping in mind the past involvement of the

petitioner in other criminal cases of similar nature.

The revision petition is dismissed. CrI.M.(B) No.1109/2016 is also dismissed as infructuous.

**A.K. PATHAK, J**

**AUGUST 09, 2016/tp**