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

+ CRL.REV.P. 553/2016

ANIL

..... Petitioner

Through : Mr. Vimal Puggal, Adv.

versus

STATE

..... Respondent

Through :Mr. Mukesh Kumar, APP with SI
Deepak Kumar, P.S. Rajouri Garden

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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26.08.2016

Crl. M.A. No. 13133/2016

Allowed, subject to all just exceptions. Application is disposed of.

CRL.REV.P. 553/2016

1. Petitioner was convicted under Section 392 of the IPC by the learned trial court vide judgment dated 11th December, 2015 and has been sentenced to face rigorous imprisonment for two years with compensation of Rs.20,000/- to the complainant. Benefit of Section 428 of the Cr.P.C. was also given to the petitioner. Petitioner preferred an appeal before the Sessions Court, which has been dismissed vide judgment dated 9th July, 2016 by the Additional Sessions Judge-05 (West), Delhi.

2. That is how, petitioner is before this Court by way of present petition

under Section 397 of the Cr.P.C.

3. Arguments heard and material placed on record has been perused.
4. Only argument canvassed by the learned counsel for the petitioner is that ingredients of offence under Section 392 of the IPC have not been disclosed in this case. It is submitted that, at best, ingredients of offence under Section 356 of IPC, that is, of snatching, are attracted. This argument was advanced by the learned counsel for the petitioner before the trial court and has been dealt with in the following manner:-

“Argument of Ld. Defence counsel is devoid of any merit as offence committed by accused is squarely covered section 390 IPC. As per deposition of PW1 accused had stopped the rickshaw that amounts to wrongful restraint and he also tried to turn turtle the rickshaw which amounts to attempt to cause hurt to the victim. Therefore, the conduct of the accused during the occurrence is squarely covered as he wrongfully restrained the complainant by stopping her rickshaw and thereafter robbed her gold chain. Section 390 IPC talks about situation when theft is converted into the offence of robbery. The present case is squarely covered under the definition. Therefore, the argument put forth by Ld. defence counsel stands rejected accordingly.”

5. It may be noted that no such argument was advanced before the Sessions Judge during the hearing of appeal.

6. Be that as it may, I have considered this contention of the petitioner in the light of evidence on record. In my view, statement of PW1 categorically discloses that the petitioner had wrongfully restrained and even tried to cause hurt to PW1. PW-1 has deposed that petitioner stopped the rickshaw and attempted to overturn rickshaw. Section 390 of the IPC provides that in all robbery there is either theft or extortion. Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint. In this case, PW1 has categorically deposed that petitioner put his hand on her right shoulder and thereafter, when she looked back, petitioner pulled her gold chain with pendent by his other hand. She cried “pakro-pakro” and chased him. PW4 Constable Mukhtar, who happened to be a beat constable, was on patrolling duty and joined PW1 and chased the petitioner and apprehended him. PW2 has also deposed that petitioner stopped the rickshaw and attempted to overturn it. In her cross-examination, PW1 denied that rickshaw was misbalanced due to negligence of rickshaw puller. In

my view, ingredients of offence under Section 392 of IPC are attracted in this case.

7. Learned counsel for the petitioner next contended that sentence of the petitioner be reduced keeping in mind that petitioner has a family to support. It has been noted by the trial court as well as Appellate Court that petitioner is involved in six other cases of similar nature. Accordingly, in my view, no further leniency can be shown in the sentence awarded by the trial court and affirmed by the Appellate Court.

8. For the foregoing reasons, petition is dismissed.

Crl. M.B. No. 1548/2016 (for suspension of sentence)

Disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 26, 2016

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