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

*Date of hearing and Order: 3<sup>rd</sup> March 2016*

+ CRL.REV.P. 322/2015  
MUKESH

..... Petitioner

Through: Mr. Puneet Singhal, Advocate  
(DHCLSC)

versus

STATE

..... Respondent

Through: Ms. Manjeet Arya, Additional Public  
Prosecutor for the State with Sub-  
Inspector Om Prakash, Police Station  
Kalyanpuri, Delhi

**CORAM:**

**HON'BLE MR. JUSTICE P.S.TEJI**

**ORDER**

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**P.S. Teji, J. (Oral)**

1. By this petition filed under Section 397/401 of Cr. P.C., the petitioner seeks to challenge the order dated 11.03.2015 passed by learned Additional Sessions Judge –03, Karkardooma Courts, Shahdara, Delhi, passed in Criminal Appeal No. 05/2015, whereby the appeal filed by the petitioner was dismissed on the ground of delay and accordingly the order dated 22.06.2012 convicting the petitioner for offence under Section 457 and 380 of IPC but acquitted under Section 411 of IPC, was confirmed. Vide order dated 17.08.2012, the petitioner was directed to undergo imprisonment for a

term of 3 years and fine of Rs.5,000/- under Section 457 of IPC and imprisonment for two years with fine of Rs.5,000/- for the offence punishable under Section 380 IPC. Both the sentences were ordered to run consecutively.

2. The case of the prosecution is that the petitioner alongwith three co-accused persons have trespassed and committed theft at the house of complainant – Samsuddin Ansari and accordingly the petitioners were charged with the offence punishable under Section 457, 380, 34 of IPC. The trial concluded and the petitioner has been sentenced as noted herein above.

3. At the outset, the learned counsel for the petitioner submits that he does not press the present revision on the point of judgment on conviction and the order on sentence passed by learned Metropolitan Magistrate on merit. The only grievance of the petitioner is to the order on sentence in which the learned Metropolitan Magistrate, while convicting the petitioner under Section 457 and 380 of IPC, has ordered that both the sentences shall run consecutively. Counsel for the petitioner submits that the purpose of filing the present revision petition will be served if the order on sentence passed by learned Metropolitan Magistrate is modified to the extent that both the sentences imposed upon the petitioner shall run concurrently.

4. Ms. Manjeet Arya, Additional Public Prosecutor appears on behalf of the State.

5. I have heard learned counsel for the parties and have also gone

through the impugned judgments and order on sentence passed by learned Metropolitan Magistrate.

6. After going through the impugned order this Court is of the considered opinion that while awarding sentence to the petitioner, the order regarding both the sentences to run consecutively, passed by learned Metropolitan Magistrate does not appear to be justiciable. Accordingly in the facts of the present case, the order on sentence passed by learned Metropolitan Magistrate is modified to the extent that the sentences awarded under Section 457 and 380 IPC to the petitioner shall run concurrently.

7. With aforesaid direction, the present petition is disposed of.

8. A copy of this order be sent to the concerned Court and to Jail Superintendant for information.

**P.S.TEJI, J**

**MARCH 03, 2016**  
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