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

+ CRL.REV.P. 689/2016 & CrI.M.A.16634/2016 & CrI.M.B.1908/2016
KUNAL MALHOTRA Petitioner

Through : Mr. Avinash Yadav, Adv.
versus

STATE Respondent

Through : Mr. Sudershan Joon, APP with SI
Krishan Kumar PS Defence Colony.
Complainant in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **25.10.2016**

Petitioner was convicted by trial court under Sections 356/379/34 IPC and sentenced to undergo rigorous imprisonment for six months under Section 356 IPC and one year with fine of ₹1,000/- for offence under Section 379 IPC. Both the sentences were directed to run concurrently.

Petitioner preferred appeal before the learned additional sessions judge (South East District), Saket, New Delhi, which has been dismissed by the order impugned in this petition under Section 397 of Code of Criminal Procedure, 1973. There are two concurrent findings of trial court and appellate court, on appreciation of the evidence. Jurisdiction of High Court under Section 397 of Cr.P.C. is supervisory in nature. High Court has not to

re-appreciate the evidence and take a different view than what has been taken by the Courts below merely because it feels that it is more plausible. It is trite to say that 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 two 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. Learned counsel for 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.

To satisfy my conscious, I have gone through the material placed on record including the statements of the material witnesses and am of the view that trial court and appellate court have rightly convicted the petitioner. PW-6 Chandni Tuteja is victim. Petitioner had robbed her. She deposed that on 19th September, 2012 at about 9:30 pm, she along with her brother Anand and sister Rashmi was going to their mother's house at Kotla Mubarakpur

from Srinivas Puri by an auto rickshaw and when they reached at Andrews Ganj bus stop, two boys came on a black colour motorcycle and snatched her bag containing her personal documents, diamond ring of her husband, two pairs of silver anklets and some cash. She tried to catch them but they managed to escape. She made a call at number 100 pursuant whereof police came at the spot. She identified her signatures on the written compliant Ex.PW-6/A pursuant whereof FIR was registered. It is noted that PW-6 had correctly identified the petitioner in TIP proceedings. She also identified the petitioner in Court as the person who had snatched her bag. In her cross examination, nothing could be elicited to contradict her version as contained in her examination in chief. Her testimony has remained unshattered and has been rightly accepted by trial court and appellate court.

During the course of hearing, learned counsel for petitioner has given up challenge to the conviction of petitioner on merits. He has only prayed for leniency in the sentence. It is contended that fine has been deposited. Petitioner is aged about 27 years. Petitioner is having three minor children. Complainant PW-6 is also present in Court and she submits that keeping in mind that petitioner belongs to a poor family and has minor children, she has pardoned him. Petitioner has already completed two and a half months of

sentence in jail.

Keeping in mind the totality of facts and circumstances, while confirming the conviction under Sections 356/379/34 IPC, petitioner's sentence under Sections 379/34 IPC is reduced to six months. All the sentences shall run concurrently.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

OCTOBER 25, 2016/dk