

\$~37

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

+ CRL.L.P. 595/2016

STATE

..... Petitioner

Through :Mr. Tarang Srivastava, APP with SI
Praveen, P.S. Mandawali

versus

SAMEER @ DILLU @ DILSHAD
Through

..... Respondent

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **10.11.2016**

Crl. M.A. no. 17514/2016 (exemption)

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

Crl. M.A. no. 17513/2016 (for condonation of delay)

Delay condoned. Application is disposed of.

CRL.L.P. 595/2016

Initially FIR was registered under Sections 379/323/34 IPC on the complaint of victim Kailash Chand Sharma. In the FIR, complainant has alleged that he was travelling in a bus plying of route no. 469 when respondent, who was standing behind him, took out his purse from the hip pocket of his pant. He caught hold of the hand of the respondent, who by

then had passed on the purse to his associate, who got down from the bus and fled. Respondent scuffled with him in order to release himself. Public person also joined him and apprehended the respondent. He sustained fracture in his finger. Respondent also sustained injuries. ₹80 and along with his ATM card was recovered from the respondent.

During the investigation, offences under Sections 394/411/34 IPC were added and charge-sheet was filed. Learned Metropolitan Magistrate was of the view that offence under Section 397 IPC was also attracted, thus, committed the case to the Sessions Court. After trial, learned Additional Sessions Judge concluded that ingredients of the offences under Sections 394/34 and 397 IPC were not attracted. Consequently, convicted the respondent under Section 379 IPC. Aggrieved by the acquittal of respondent under Section 394 and 397 IPC petitioner has filed this petition seeking leave to appeal against the acquittal of respondent under the aforesaid provisions.

Complainant Kailash Chand Sharma was examined as PW1. His testimony has been found to be trustworthy and reliable by the trial court. PW7 Gyan Singh, bus driver, did not support the prosecution version. PW8 Durgesh, the conductor of the bus, also did not support the prosecution case.

Other witnesses are the police officials. Star witness of the prosecution is PW1, on whose testimony trial court has concluded that respondent had picked his pocket; however, trial court has noted that injuries were suffered during the scuffle, inasmuch as respondent had also sustained injuries, thus, ingredients of offences under Sections 394/34 were not attracted. It was a simple case of pick pocketing and ingredients of Section 379 IPC were not attracted. I find the view taken by the trial court to be a possible view in the peculiar facts of this case. It is not the case that respondent was armed with a weapon which he used while taking out purse from the pocket of complainant or had used the same to threaten the complainant in order to flee after committing the offence. It appears that respondent was trying to save himself while complainant and other persons apprehended him and gave beatings to him and in such a scenario, there is every possibility of complainant also sustaining fracture in his finger.

I do not find the view taken by the trial court to be perverse. Accordingly, in my view, it is not a fit case to grant leave to appeal to petitioner.

Petition is dismissed.

A.K. PATHAK, J.

NOVEMBER 10, 2016/rb