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

Date of hearing and Order: 16th March 2016

+ CRL.REV.P. 445/2015
TAUHID

..... Petitioner

Through: Mr. Zafar Sidique, Mr. Tarun Kumar,
Md. Manzar Anis, Advocates

versus

STATE

..... Respondent

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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16.03.2016

P.S. TEJI, J. (ORAL)

1. By this petition filed under Section 397/401 of Cr. P.C. read with Section 482 of Cr. P.C. , the petitioner seeks to challenge the order of conviction dated 04.09.2014 and order on sentence dated 08.09.2014 passed by learned Metropolitan Magistrate 05, Central Delhi, whereby the petitioner was sentenced to undergo simple imprisonment for a period of three years. The petitioner also seeks to challenge the orders dated 12.11.2014 passed by learned Additional Sessions Judge -02, Central, Delhi, passed in Criminal Appeal No.51/2014, whereby the learned Additional Session Judge has

dismissed the appeal filed by the petitioner and upheld the impugned orders passed by the learned Metropolitan Magistrate 05, Central, Delhi.

2. The case of the prosecution in brief is that on 07.07.2011 at about 8.30 PM at Pahar Ganj Flyover, Ajmeri Gate, Delhi accused Tauhid used criminal force upon the complainant Jyoti for snatching her golden chain from her neck and he took away the said golden chain with dishonest intention from the possession of complainant without her consent and further on the aforesaid date, time and place accused Tauhid was found in possession of the said stolen golden chain which was received or retained by accused knowingly or having reason to believe the same to be stolen property and he thereby committed the offences punishable under Section 356/379/411 of IPC. Accordingly charges were framed against the petitioner to which he pleaded not guilty.

3. In order to prove its case, the prosecution examined 7 witnesses and the statement of accused (petitioner herein) was recorded under Section 313 Cr. P.C. to which he denied the charges and claimed trial. Trial begin, evidence lead and arguments heard. Ultimately, vide impugned orders the petitioner was convicted with the offences charged against him and was sentenced to undergo 3 years imprisonment for the offence under Section 379 of IPC and simple imprisonment of 2 years for the offence under Section 356 IPC. Both the sentences were ordered to run concurrently.

4. The petitioner filed appeal against the aforesaid impugned orders and the learned Additional Session Judge vide order dated 12.11.2014, dismissed the same finding no merits therein.

5. Mr. Zafar Sidique, learned counsel appearing for the petitioner raised the contradictions in the testimonies of the witnesses and regarding recovery, it is submitted that the same was planted upon him. Counsel for the petitioner further contended that no public witness has joined the investigation at the time of arrest of the accused.

6. At this stage, the learned counsel for the petitioner restricts his arguments on sentence passed by learned Metropolitan Magistrate and submits that the petitioner has already undergone the sentence for a period of 1 year 9 months and 10 days and has also earned the remission of 1 month and 20 days. Counsel for the petitioner further contended that the petitioner has four minor children and a wife and he is not a previous convict in any other case, therefore, some leniency in order on sentence be granted to the petitioner.

7. Mr. Rajat Katyal, Additional Public Prosecutor appearing for the State contended that the impugned orders passed by learned Metropolitan Magistrate as well as order passed in appeal by learned Additional Session Judge are well reasoned orders and they do not call any interference therefore the present revision petition is liable to be dismissed.

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

through the impugned judgments and orders and the nominal roll of the petitioner.

9. After considering the submissions advanced by both the sides and upon perusal of the impugned order, evidence on record and the decisions cited, I find that there is no illegality or infirmity in the impugned conviction of petitioner-accused. However, on the quantum of sentence, this Court observes that the petitioner is a sole bread-earner of his family having four minor children and a wife to look after them and in the considered opinion of this Court, the petitioner has already faced agony of these proceedings for last about 5 years. Nominal roll of the petitioner is also perused by this court, according to which the petitioner has already remained behind the bars in this case for 1 year, 9 months and 10.

10. This court further observes that the petitioner is charged with the offence punishable under Section 356/379 of IPC, which do not prescribe any minimum sentence. Therefore, after considering the facts that the petitioner is not a previous convict, has family to support and has already undergone the agony these proceedings for the last about 5 years, this Court is of the opinion that ends of justice would be met if petitioner's substantive sentence is reduced from 3 years to 2 years.

11. In view of the aforesaid discussion, the present revision petition is partly allowed on the quantum of sentence to the extent indicated above.

12. Trial Court be apprised of this order forthwith by sending copy of this order.

13. Copy of this order be also sent to the Jail Superintendent for information.

14. This revision petition is disposed of in aforesaid terms.

P.S.TEJI, J

MARCH 16, 2016
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