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

Date of hearing and Order: 16th March 2016

+ CRL.REV.P. 767/2015
PRAKASH

..... Petitioner

Through: Mr. R.K. Gupta, Advocate

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER
% **16.03.2016**

P.S. TEJI, J. (ORAL)

1. By this petition filed under Section 397(1)/401 of Cr. P.C. read with Section 482 of Cr. P.C. , the petitioner seeks to challenge the order of conviction dated 28.08.2014 and order on sentence dated 09.09.2014 passed by learned Metropolitan Magistrate, Saket Courts, New Delhi, whereby the petitioner was sentenced to undergo rigorous imprisonment for a period of one year. The petitioner also seeks to challenge the orders dated 07.10.2015 passed by learned Additional Sessions Judge, Saket, Delhi, passed in Criminal Appeal

No.111/2014, 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, Saket, Delhi.

2. The FIR No.417 dated 08.10.2013 at Police Station Saket, Delhi was registered at the instance of Mahesh Chand (complainant herein). According to the complainant, he parked his car while locking the doors and his wife went to take the vegetables at Rehri. One boy aged about 30-32 years having heavy built, wheatish color came near his vehicle and knocked the door. The complainant opened the door and the person knocking the door told him that oil was coming out of his vehicle and there was also smoke. Thereafter, the complainant came out of the vehicle and saw that black paint was thrown on front part of the bonnet and he grew suspicion and saw that the same boy was running after stealing his black colour bag kept on back seat of his vehicle. The complainant raised hue and cry and the public persons caught him and gave beatings to him. He made a call to PCR and the boy was taken to hospital.

3. During investigation it was revealed that it was the petitioner and he was charged for the offence under Section 379 of IPC for having committed theft of complainant's black colour bag containing pass book, documents and one Tiffin box. Alternatively the petitioner was charged for the offence under Section 411 of IPC for having dishonestly retained the stolen bag with its contents. Statement of the petitioner was recorded under Section 313 of Cr. P.C. in which he denied the allegations and claimed trial.

4. After completion of trial, the petitioner was found guilty for the offence under Section 411 and 379 IPC and was ordered to undergo rigorous imprisonment for a period of one year for offence under Section 379 IPC.

5. The petitioner filed appeal against the aforesaid impugned orders and the learned Additional Session Judge vide order dated 07.10.2015, dismissed the same finding no merits therein.

6. Mr. R.K. Gupta, learned counsel appearing 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 6 months and has also earned the remission of 23 days. Counsel for the petitioner further contended that the petitioner has family to support, therefore, some leniency in order on sentence be granted to the petitioner.

7. Ms. Manjeet Arya, 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 order and they do not call any interference therefore the present revision petition is liable to be dismissed.

8. I have heard the 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. Accordingly, the impugned orders passed by learned Metropolitan Magistrate as well as learned Additional Session Judge are upheld. However, on the quantum of sentence, this Court observes that the petitioner is a sole bread-earner of his family and he has already faced agony of these proceedings for last about 3 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 6 months and one day.

10. This court further observes that the petitioner is charged with the offence punishable under Section 379/411 of IPC, which do not prescribe any minimum sentence. Therefore, after considering the facts and circumstances of the present case, and the fact that the petitioner has faced the agony of these proceedings for the last about 3 years, this Court is of the opinion that ends of justice would be met if petitioner's substantive sentence is reduced from one year to 6 months.

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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