

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.2782 of 2009 (O&M)
Date of Decision: 31 October, 2017

Naresh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amninder Preet, Advocate (Amicus Curiae)
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

This is a criminal revision petition in terms of Section 401 Cr.P.C preferred by the convict-revisionist Naresh Kumar, whereby, he has led challenge to his conviction initially by the Court of learned Judicial Magistrate 1st Class, Panipat through judgment dated 22.09.2008 in case bearing FIR No.107 dated 8.9.2004, thereby, convicting him under Sections 411 and 452 IPC and was sentenced to undergo following rigorous imprisonment:-

Under Section 411 IPC	Rigorous imprisonment for one year and to pay fine of Rs.500/- and in default thereof to undergo rigorous imprisonment for three months.
Under Section 452 IPC	Rigorous imprisonment for one year and to pay fine of Rs.500/- and in default thereof to undergo rigorous imprisonment for three month.

The revisionist then challenged his conviction before the learned Additional Sessions Judge, Panipat and through impugned judgment dated 07.10.2009 his appeal too stood dismissed upholding the orders of the Court below.

Upon hearing learned counsel for the parties. The brief facts leading to this conviction that need to be highlighted are that the complainant Shyam Lal made a complaint before the Police on 8.9.2004 alleging that during the intervening night of 26-27 August, 2004 while they were sleeping in their house around 2.30 a.m, when his wife went inside the house, a boy, present revisionist was present in the house who pushed the wife of the complainant and ran away. On checking of the house, it was revealed that certain articles including the gold jewellery, cash amount of Rs.3000/- and other articles were missing from their almirah. As a consequence of this, when the matter could not be resolved by the respectables of the village led to the filing of the complaint and ultimately registration of FIR.

The prosecution to substantiate its case at the trial examined PW1 Shyam Lal, complainant followed by corroboration from the testimony of PW2 Chander Patti, wife of the complainant, an eye-witness and, thereafter, PW3 Investigating Officer, ASI Balwant Singh, PW4 ASI Ram Phal and PW5 Constable Ranbir Singh. The accused was put to the entire incriminating evidence in his stand under Section 313 Cr.P.C who denied the allegations taking the plea of innocence and false implication. In his defence accused examined DW1 Azad Singh. It is consequent thereupon, the impugned findings were recorded.

Learned counsel for the petitioner at the very onset squarely accepted the fact that it was belatedly the defence has been taken up by the accused of previous enmity with the complainant side but has failed to prove it by examination of DW1. The prosecution has duly

established the fact that it was consequent upon his arrest on 10.09.2004 when the accused while in police custody was interrogated and who has suffered disclosure statement Ex.PW1/B and on the basis of which has taken the Police to village Naultha and from his house he got recovered the stolen articles which were packed in box of pink colour. The articles so recovered have been identified by the Pws and taken into Police possession by way of Ex.PW1/C. Both the material witnesses in the light of the contentions of the State counsel have materially supported and corroborated the case of the prosecution by all means and which has been lend credence by the official witnesses of the prosecution.

Learned counsel for the revisionist has made a fervent prayer that petitioner is a student and has already undergone almost two and a half months incarceration and if he is sent behind the bars his entire academic career would be jeopardised and, thus, prayed for showing leniency and grant of probation.

Though, learned State counsel has shown some resistance to this prayer, the accused has been convicted under Section 411 IPC which prescribes imprisonment for a term which may extend to three years, or with fine or with both and Section 452 IPC for which accused too has been convicted prescribes imprisonment for a term which may extend to 07 years. In the mind of this Court, the very perusal of statements of the two material witnesses PW1 and PW2 bear out that it was a mere simplicitor house-trespass to commit offence of theft and neither learned counsel for the State impress upon this Court how there has been house- trespass after preparation for causing hurt to any person or for assaulting any person or

for wrongfully restraining any person and which elements necessary for conviction are very much missing in the present case. The own stand of the prosecution through complainant and his wife bears out that on seeing wife enter, the accused has pushed her and ran away and which entry by way of house-trespass was to enable him to commit offence of theft and, thus, applicability of Section 452 IPC is highly doubtful and in the light of evidence led before this Court, only offence under Section 451 IPC is made out for which similar punishment has been prescribed as for Section 452 IPC.

Keeping in view that the petitioner is a young boy, a student and has already undergone incarceration for a period of more than two months and if he is sent behind the bars there is every likelihood that he will mix up with dangerous criminals and might go astray from the path of rectitude and might become a hardened criminal. Thus, to ward off any such eventuality and taking a lenient view and having regard to the sentence of imprisonment awarded by the Court below and to create a balance between the prosecution and the defence in the administration of justice and keeping in view the fact that the petitioner by now must have been on the verge of living a married life and would have its own repercussions on the family, it would meet the ends of justice, if the prayer made by the petitioner's counsel is accepted and the petitioner is allowed concession of probation by exercising powers under Section 360 Cr.P.C which are enshrined purely for a social purpose to prevent vagrancy and destituteness for first time offenders. As State admits that petitioner is first time offender.

Thus, the petitioner is allowed concession of probation

in terms of Section 4 of the Probation of Offenders Act, 1958 for a period of one year on his entering into a bond in the sum of Rs.10.000/- with one surety in the like amount to the satisfaction of the trial Court undertaking therein that he will keep peace and maintain good behaviour and will appear and receive sentence as and when called upon to do so during the said period. However, to protect the interest of the complainant and to ensure that the State which has incurred expenses on the trial and prosecution of the accused be also adequately compensated, it would meet the ends of justice, if a cost of Rs.10,000/- is imposed out of which a sum of Rs.5000/- will be given to the complainant and Rs.5000/- will be deposited in the District Legal Service Authority, Panipat.

In the light of the same, the revision petition stands allowed in those terms, thereby, modifying the impugned judgments.

(FATEH DEEP SINGH)
JUDGE

October 31, 2017

aarti

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No