

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR No.2336 of 2014 (O&M)
Decided on: 20.09.2017

Yogender

.....Petitioner.

Versus

State of Haryana and another

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Surinder Singh Duhan, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present revision petition against the judgment of conviction and order of sentence dated 21.07.2014 passed by learned Additional Sessions Judge, Bhiwani, whereby the appeal preferred by the complainant against the judgment of acquittal dated 11.11.2011 passed by learned Judicial Magistrate Ist Class, Charkhi Dadri was partly accepted and the petitioner-accused was sentenced to undergo rigorous imprisonment for a period of two years.

Briefly stated, complainant - Om Parkash had lodged a complaint with the allegations that on the intervening night of 26/27.02.2004, he along with his family members was sleeping in his house and when he woke up at 5.30 a.m., he found that all the doors of his house were open and the lock of store room was broken and missing. A box in which cash and documents

were kept was found lying outside the room and cash amount of Rs.1,85,000/- was found missing from it. The documents were lying scattered there and the box containing ornaments was also missing. On the basis of aforesaid complaint, FIR No.26 dated 28.02.2004 under Sections 457/380/411 IPC (Ex.PW-5/B) was registered against the petitioner-accused at Police Station Sadar Dadri and investigation was conducted by the police. The petitioner-accused was arrested, however, later on, he was released on bail. After completion of investigation, challan was filed in the Court. On finding a *prima facie* case against the petitioner, he was charge-sheeted for offence under Sections 457 and 411 IPC, to which, he did not plead guilty and claimed trial.

The trial Court, after recording the evidence and hearing the parties, acquitted the petitioner-accused of the charges framed against him vide judgment dated 11.11.2011.

Feeling aggrieved, the complainant preferred an appeal against the judgment of acquittal before the Court of Session, which was partly accepted by learned Additional Sessions Judge, Bhiwani vide judgment dated 21.07.2014 and the petitioner was convicted for commission of offence under Section 411 IPC, though he was acquitted for charge under Section 457 IPC and vide separate order dated 21.07.2014, he was sentenced to undergo rigorous imprisonment for a period of two years.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

At the outset, learned counsel for the petitioner has not challenged conviction of the petitioner and has confined his arguments *qua*

the quantum of sentence only. He has contended that considering the fact that the petitioner is HIV Positive patient, this Court vide order dated 19.12.2014, had already suspended his sentence. Moreover, as against the awarded sentence of two years, the petitioner has undergone about 8 months of sentence including the period of remission. He is a first time offender and there is no other criminal case pending against him. Even otherwise, the dispute has arisen between the petitioner and the complainant for the reason that daughter of the complainant had ran away with the petitioner. Thus, he has prayed that the sentence of the petitioner may be reduced to the period already undergone by him.

On the other hand, learned State counsel has filed the custody certificate of the petitioner and has also not disputed the custody of the petitioner and the fact that there is no other case against him. Moreover, in view of medical report, as referred in order dated 11.09.2014 passed by this Court in CRWP-1330-2014 *Yogender v. State of Haryana & another*, learned State counsel is not in a position to controvert the fact that the petitioner is a HIV Positive patient.

I have heard learned counsel for the parties.

Perusal of the impugned judgment passed by the lower Appellate Court shows that it has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 411 IPC. There is no illegality or perversity in the findings so given, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, learned counsel for the petitioner has not assailed the judgment of

conviction on merits and has, rather, restricted his arguments *qua* the quantum of sentence only. The conviction of the petitioner is, therefore, affirmed.

Admittedly, as against the awarded sentence of two years, the petitioner has already undergone imprisonment for eight months including remission. He is a first time offender and there is no other case pending against him. The petitioner is a HIV positive patient and accordingly, his substantive sentence has already been suspended by this Court. Therefore, considering the fact that the petitioner is a HIV positive patient and no useful purpose will be served by keeping him in jail, this Court feels that the ends of justice would be met, if the substantive sentence awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the present revision petition is dismissed, however, the substantive sentence of petitioner Yogender is reduced to the period already undergone by him.

September 20, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No