

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

**CRR-4084-2016 (O&M)
Date of Decision: 09.11.2017**

MUKESH KUMAR

...Petitioner

V/S

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present: Mr. G.S. Bawa, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

H.S. MADAAN, J. (Oral):

Petitioner-Mukesh Kumar, an accused in FIR No.25 dated 30.04.2013 for offences under Sections 454 and 380 of Indian Penal Code (hereinafter referred to as 'IPC'), was tried by the Additional Chief Judicial Magistrate, Pathankot, who, vide judgment dated 26.02.2016 convicted the accused for offence under Section 454 of IPC sentencing him to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.100/- in default of payment of fine to undergo rigorous imprisonment for thirty days and for offence under Section 380 of IPC, to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.100/-, in default of payment of fine to undergo further rigorous imprisonment for a period of thirty days. Both the sentences were ordered to run concurrently.

Feeling aggrieved by the said judgment of his conviction sentence, the accused has preferred an appeal which was disposed of by the Additional Sessions Judge, Pathankot, vide judgment dated 19.05.2016 inasmuch as the appeal was dismissed in toto. As such, the accused has approached this Court by way of filing the present revision petition.

Briefly stated, the facts of the case are that an FIR was lodged by complainant-Nathi Ram son of Fateh Chand, resident of Tuthowal Kharkhara, Narot Jaimal Singh, who, in his statement got recorded by the police on 30.04.2013 stated that on 30.04.2013, when his whole family had gone to Saharan Laget, Kathua (J&K) for some function in relations at about 2:00 PM after putting down the shutter of his shop, he had returned home to take bath and when he found that Mukesh Kumar @ Jaffu son Dwarka Dass, resident of Tuthowal Kharkhara was committing theft by entering his house, he grappled with him but after pushing him. He had checked the Godrej almirah and back of the bed, which revealed that gold articles and cash were missing. After registration of the FIR, the case was investigated and the accused was arrested. He has suffered disclosure statement and got effected the recovery of gold jewellery.

I have heard learned counsel for the revision petitioner-accused-convict and learned State counsel and gone through the record. At the very outset, learned counsel for the petitioner states that he does not challenge the judgments passed by the Courts below as far as conviction is concerned and his only prayer is with regard to reduction in the sentence part. He has submitted that out of substantive sentence of three years imprisonment imposed upon him, he has already undergone total sentence of two years and eleven days. This fact is corroborated from the perusal of custody certificate filed by the State counsel.

The petitioner is shown to be involved in two more criminal cases. In one of the such cases, he is shown to have been acquitted, whereas, in other case, he is shown be on bail. The petitioner is stated to be of young age of about thirty years and the only earning member in the family. A prayer for leniency has been made.

After hearing learned counsel for the parties and going through the records, I find that the ends of justice would be met if petitioner is sentenced to imprisonment already undergone by him in this case. Therefore, the revision petition is allowed partly inasmuch as conviction of the petitioner-accused-convict is maintained but his sentence is reduced to the imprisonment already undergone by him in this case as regards both of offences, whereas, regarding the fine part, the same is kept intact. With such modification in the impugned judgments, the revision petition stands partly allowed. Accused-petitioner be released forthwith, if not required in any other case.

(H.S. Madaan)
Judge

09.11.2017

Nisha

Whether speaking/reasoned: Yes

Whether Reportable: No