

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

(i)

CRR No.1265 of 2017 (O&M)

Shamsher Singh alias Shami and another

...Petitioners

VERSUS

State of Punjab

...Respondent

(ii)

CRR No.1319 of 2017 (O&M)

Surinder Kumar alias Sonia and another

...Petitioners

VERSUS

State of Punjab

...Respondent

Date of Decision: May 30, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashish Gupta, Advocate
for the petitioners (in CRR No.1265 of 2017).

Mr.A.G.S.Dhillon, Advocate
for the petitioners (in CRR No.1319 of 2017).

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected
revisions as the same have arisen from same FIR.

The above-mentioned revision petitions have been filed by

petitioners against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 26.07.2016 passed by learned Judicial Magistrate Ist Class, Patiala, vide which the petitioners were convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹500/- and in default of payment of fine, to undergo simple imprisonment for a period of five days each under Section 411 IPC and also challenging the judgment dated 15.03.2017 passed by learned Addl. Sessions Judge, Patiala, vide which the appeal filed by petitioners was dismissed.

At the time of preliminary hearing, learned counsel for the petitioners did not dispute the concurrent findings of the Courts below regarding conviction and only contended on the point of reduction of sentence.

Notice of motion was issued only qua quantum of sentence. Learned State counsel appeared and contested the petition.

From the record, I find that the challan was presented against petitioners in case FIR No.165 dated 29.08.2013. The brief facts of the case as noted down in the judgment passed by learned JMIC, Patiala, are as under:-

“2. The case of the prosecution is that on 29.8.2013, ASI Sukhwinder Singh along with Gurlal Singh and HC Jiwan Kumar, was present opposite the gate of New Sabzi Mandi, Sanour Road, Patiala, in connection with patrolling, in a private car, when Kamal Kumar son of Ram Sarup got his statement recorded before ASI Sukhwinder Singh to the effect that he is a resident of Cheema Bagh Colony, Police Station Sadar, Patiala and is idle these days but was previously working at a cigarette shop in Kor Chand Laxman Dass, Sirhandi Bazar. He stated that he and his wife Charanjit Kaur reside in their house and that he has no children. In the other portion of the house his brother Daman Kumar is residing

separately. On the intervening night of 28/29.8.2013, complainant Kamal Kumar was on community watchman duty in the colony and his wife was sleeping alone in the house. He had pushed the door of his house and had switched on the street light in front of his house. At around 3:00 a.m. in the morning, when he returned with his friends after taking a round of the colony, he saw that all the lights in Cheema Bagh Colony were on but the street light in front of his house was off. He switched on the street light and saw in the light that the door of his house was open. When he switched on the light in the room he saw that the iron trunk was not there in which Rs.6,000/- and his mother's heirloom jewellery were there. He looked for the trunk in the bushes and in the vacant plot and other places along with the others but he could not find the trunk, which had been stolen by some unknown persons from the room. The statement was attested by ASI Sukhwinder Singh and a case was registered against unknown persons. The dog squad and finger print expert staff were called at the spot but no clue could be found. Site plan was prepared and the accused were searched for but no clue was found. On 30.8.2013, complainant Kamal Kumar got his supplementary statement recorded before ASI Sukhwinder Singh to the effect that he suspected that his neighbours Raju and Rakesh had committed the theft. On 31.8.2013, the complainant's brother namely Chaman Lal got his statement recorded that he had seen Sonia and relative of Raju namely Shami roaming around at night and he raised his suspicion. He also stated that the above mentioned persons should be questioned and the stolen goods should be recovered. ASI Sukhwinder Singh obtained the tower location of Surinder Kumar @ Sonia and Harman Raj @ Raju. ASI Sukhwinder Singh then received secret information that the accused who had committed theft in the present case are present at Punjabi University, Patiala, near the bus stop. The informer stated that if the said persons are apprehended then the stolen goods can be recovered from them. ASI Sukhwinder Singh along with the police party apprehended all the four accused and questioned them. The accused were arrested. During questioning the accused got their statement recorded under Section 27 of the Evidence Act that the stolen gold and silver jewellery has been hidden by them and about which only they know and they can get the same recovered. As per the disclosure statement the accused led the police party to the place mentioned by them and got the stolen goods recovered. The recovered goods were taken into possession by the police vide a memo, on 9.9.2013. On 10.9.2013, all the four accused got a disclosure statement recorded to the effect that they had taken some of the articles out of the stolen jewellery to Ambala for selling the same but since they were unable to sell the same they had hidden the articles at Shamsher's village Baprour. They also stated that they could get the same recovered. As per their disclosure

statement, the accused got more articles recovered, which were taken into possession by ASI Sukhwinder Singh. On 10/11.4.2013, an inverter, battery and stand were recovered from village Dhon Kalan Government Dispensary by the police under Section 102 of the Code of Criminal Procedure, 1973. The witnesses appended their signatures on the memos. Offence under Section 411 of the Indian Penal Code was added. Statements of witnesses were recorded. After completion of investigation and other attendant formalities, a report was prepared in terms of Section 173 of the Code of Criminal Procedure, 1973, and was presented in the Court.”

Learned JMIC, Patiala after appreciating the evidence, convicted and sentenced the petitioners as stated above. An appeal was filed by the petitioners and the same was dismissed by learned Addl. Sessions Judge, Patiala, vide judgment dated 15.03.2017.

Aggrieved from the above-said judgments, present revision petitions have been filed.

At the time of arguments, learned counsel for the petitioners prayed for reduction of sentence. Learned counsel for the petitioners contended that petitioners are poor persons, only bread earners of the family and suffering from the criminal proceedings since 2013.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that petitioners are stated to be poor persons, only bread earners of the family and facing long protracted criminal proceedings since 2013 i.e. for the last about 4 years, the sentence imposed upon the petitioners is reduced and they are directed to undergo rigorous imprisonment for a period of four months instead of one year under Section 411 IPC. However, sentence of fine and in default thereof shall remain the

same.

With the above-said modification in the sentence, both the revision petitions stand dismissed.

May 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No