

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

CRR No.1297 of 2017 (O&M)

Date of Decision: June 01, 2017

Kasha

....Petitioner

vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. S.N. Pillania, Advocate
for the petitioner.

Mr. C.S. Bakshi, Addl. A.G. Haryana.

TEJINDER SINGH DHINDSA, J.

Vide the judgment dated 24.04.2015, learned Judicial Magistrate, 1st Class, Narwana, convicted the petitioner for offences punishable under Sections 457 and 380 of the Indian Penal Code in pursuance to registration of FIR No.57 dated 04.03.2013, registered at Police Station Sadar, Narwana. Order of sentence was passed on 27.04.2015 and the petitioner was sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.2000/- for commission of offence under Section 457 IPC and simple imprisonment for a period of one year and to pay a fine of Rs.1,000/- for commission of offence under Section 380 IPC. In default of payment of fine, the petitioner was to undergo further imprisonment for three months. Both the substantive sentences were directed to run concurrently.

Appeal having been preferred, vide order dated 14.03.2017, conviction of the petitioner under Section 457 and

380 IPC, has been upheld but the sentence awarded was reduced to simple imprisonment of six months for each of the offences i.e. under Section 457 and 380 IPC.

It is against the concurrent conviction of the petitioner recorded by the Courts below and as noticed hereinabove that the instant revision petition has been filed.

Counsel appearing for the petitioner at the very outset makes a statement that he is not assailing the conviction on merits but prays for a lenient view to be taken as regards quantum of sentence.

In the light of such submission made, it would be necessary for this Court to delve into the minute details of the case.

Suffice it to notice that the process of law was set in motion on the complaint of Rajinder Kumar and who asserted that he was running a mobile repair shop. On 03.03.2013, in the evening, he closed his shop and went to his house. On the following day, when he reached his shop, found that the lock of his shop was broken and articles inside were scattered. Upon checking, he found a number of articles were stolen i.e. 65 charger pins, 36 display screens, 20 key-pads, one Luminous battery, 2 big batteries, 2 Samsung batteries, 37 Remax batteries, 40 condemn mobile sets and so on forth. Complainant pointed a finger of suspicion at the present petitioner and one Shippar S/o Bhadra for having stolen the articles. On the basis of the complaint, the case under Section 457 and 380 of the Indian Penal Code, was registered. Investigation was carried out by ASI Suresh Kumar. On 05.03.2013, accused Vikas @ Kasha i.e. the present petitioner, was arrested. On 07.03.2013 upon interrogation, the petitioner suffered a disclosure statement Ex. PW-2/B and on the basis of such disclosure a number of batteries and other stolen articles were recovered. Upon completion of investigation, final report under Section 173 Cr.P.C., was

presented against the petitioner and co-accused Sandeep @ Shippar. Charges were framed under Section 457 and 380 IPC and to which, the petitioner as also co-accused Shippar, pleaded not guilty and claimed trial. The trial has culminated in the conviction of the petitioner and order of sentence as noticed hereinabove.

Perusal of the judgments recorded by the Courts below would reveal that the conviction of the petitioner has been recorded upon due appreciation of evidence adduced on record. The Courts below have taken a concurrent view that the stolen articles were recovered from the possession of the petitioner and as such, a presumption arises under Section 114 of the Indian Evidence Act, 1872 that he has committed the theft. No reason is coming forth as regards false implication. The conviction of the petitioner, as such, does not call for any interference.

However, this Court finds that there are sufficient mitigating circumstances to take a lenient view as regards reduction of sentence.

Petitioner is a first time offender. He is not stated to be involved in any other criminal proceeding. Petitioner is stated to be the sole bread winner of the family. Co-accused Shippar had confessed to his guilt during the course of trial and as such, a lenient view was taken qua him and he was sentenced to the period of imprisonment already undergone.

As per custody certificate furnished by learned State counsel, petitioner has undergone an actual custody period of two months and 23 days as on 29.05.2017.

In the considered view of this Court, the ends of justice would be met, if the substantive sentence awarded to the petitioner is reduced to a period of four months simple imprisonment.

For the reasons recorded above and in view of the mitigating circumstances noticed, the present revision petition is

disposed of in terms of affirming the conviction of the petitioner under Sections 457 and 380 of the Indian Penal Code. The substantive sentence awarded to the petitioner is reduced to a period of four months.

Petitioner would be released upon completion of such reduced sentence and after depositing of fine as imposed by the trial Court, if not already paid.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

01.06.2017
anju rani

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