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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 122/2017

V K RAJU

..... Petitioner

Through: Mr.Tripurari Jha, Adv.

versus

STATE OF DELHI

..... Respondent

Through: Ms.Neelam Sharma, APP.
SI Naveen, P.S.Subzi Mandi.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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17.05.2017

Crl.M.B.821/2017

V.K.Raju was convicted and sentenced by the Trial Court vide judgment and order dated 25.10.2016 and 28.10.2016 respectively passed in case No.304135/16 arising out of FIR No.388/2001 (P.S.Subzi Mandi) instituted for the offences under Sections 454/379/411 of the IPC and has been sentenced to undergo RI for two years and fine of Rs.5000/- for the offence under Section 454 and RI for one year, fine of Rs.5000/- for the offence under Sections 379/411 IPC.

The appeal of the petitioner vide Crl.Appeal No.12/2016 was dismissed vide judgment dated 20.01.2017.

The petitioner has assailed the aforesaid two judgments in the present revision petition.

The petitioner was alleged to have entered the hostel room of the complainant, Dr.Dev Nath Jha in St.Stephens Hospital by breaking open the

lock and had attempted to steal a trouser, a wrist watch and a pager. He was caught while trying to escape.

The stolen articles were seized vide memo Exh.PW-1/B. On the personal search of the petitioner, an amount of Rs.67/-, one wrist watch and one packet containing chilli powder was recovered, which was seized vide memo No.Exh.PW-1/D.

After submission of chargesheet, charges were framed and the petitioner was put on trial.

Dr.Dev Nath Jha (PW-1) who is the complainant of the case deposed that on 21.11.2001 he had locked his room and had gone outside for some personal work. When he came back, he found the lock of his room broken and also witnessed one person coming with some article in his hand out of the room. An alarm was raised by him, on which Balbir Singh (PW-2) reached and apprehended the petitioner.

Similar statement has been made by Balbir Singh (PW-2).

SI Raman Pratap Singh, IO (PW-6) is said to have prepared the rukka (Exh.PW-6/B) on the basis of the statement made by PW-1 and handed over the same to Constable Kartar Singh for registration of the FIR. The site plan (Exh.PW-6/C) was also prepared by him. He seized the recovered articles including iron rod and broken lock (Exh.PW-1/B and Exh.PW-1/F).

Though there is no direct evidence of the petitioner having broken the lock of the room but his being apprehended on the spot clearly establishes that the petitioner was there at the place of occurrence. The articles belonging to PW-1 were also found from his possession. What is clinching about the involvement of the petitioner is the report of Sheoraj Singh (PW-3) who had taken the chance print from the room of PW-1. The report

(Exh.PW-3/A) shows that the chance print lifted from the room of PW-1 and the specimen finger impression of the petitioner were identical.

The defence of the petitioner that he had gone to hospital where he had a quarrel with the watchman which led to his false implication does not appear to be probable and it does not inspire confidence at all. There is no reason for the petitioner to have carried the packet of chilli powder if he had come to the hospital for his treatment. Assuming the defence of the petitioner to be true, there is no reason for PW-1, who is a doctor, to saddle the petitioner with false charges.

The contradictions pointed out by the petitioner in the deposition of prosecution witnesses do not adversely affect the substratum of the prosecution version.

Thus there is no reason to differ with the concurrent findings of the Courts below.

However, taking into account the other attending facts and circumstances viz. the petitioner coming from a poor family, his responsibility to maintain his family and the theft of a trouser, a wrist watch and a pager, do call for modification/reduction of the sentence imposed upon him. The nominal roll suggests that the petitioner has remained in jail for 3 months and 8 days during the entire period of trial and after conviction. His conduct in jail also has remained satisfactory throughout.

Taking into account the aforesaid circumstances, this Court is of the view that the sentence imposed upon the petitioner is on the harsher side and the interest of justice would be sub-served if the sentence is reduced to the period of custody which the petitioner has already undergone for both the offences viz. Section 454 and 379/411 IPC.

The conviction of the petitioner, thus, is sustained but the sentence is modified to the extent of the period which the petitioner has already undergone in custody.

The petitioner be released from jail forthwith, if not wanted in any other case.

The revision petition is partly allowed.

A copy of this order be sent to the Jail Superintendent, Tihar for information and compliance.

ASHUTOSH KUMAR, J

MAY 17, 2017

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