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

DECIDED ON : APRIL 21, 2017

+ **CRL.REV.P.318/2016**

MOUMIN

..... Petitioner

Through : Mr.Tarun Khanna with Ms.Saahila
Lamba, Advocate.

versus

STATE

..... Respondent

Through : G.M.Farooqui, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Instant Revision petition has been preferred by the petitioner to impugn a judgment dated 29.2.2016 of learned District and Sessions Judge in Crl.A.No.02/16 by which conviction and sentence awarded by the Trial Court in Case FIR No.890/2015 registered under Section 356/379/411 IPC at Police Station Saket were upheld. The petitioner was sentenced to undergo Simple Imprisonment for three years for commission of offence punishable under Section 379 IPC and Simple Imprisonment for one year under Section 356 IPC. Both the sentences were directed to run consecutively i.e. one after the other.

2. I have heard the learned counsel for the parties and have examined the file. The incident of mobile snatching took place on 27.7.2015 at around 11.00 p.m. The Investigating Officer on receipt of the complaint

(Ex.PW-1/A) lodged the FIR on the same day. In the complaint, the complainant Shilpi Singh disclosed that while she was crossing the road at Select City Walk Mall, her mobile phone was snatched by the petitioner. On her raising alarm, he was arrested near the spot and the mobile was recovered from his possession. During investigation, statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the petitioner for commission of the aforesaid offences. In order to establish its case, the prosecution examined four witnesses. In his 313 statement, the petitioner denied his involvement in the crime and pleaded false implication. The trial resulted in conviction, as aforesaid. The appeal preferred by the petitioner resulted in its dismissal.

3. In her court statement as PW-1, the complainant proved the version given to the police at first instance without major variations. She identified the petitioner to be the assailant who had snatched the mobile phone on 27.7.2015 at around 11.00 p.m., when she had come out of Select City Mall and was crossing the road. The petitioner was arrested vide arrest memo (Ex.PW-1/D). Ex.P1 is the mobile snatched from her. She was cross-examined at length. However, despite searching cross-examination, nothing material could be extracted to disbelieve her statement. No ulterior motive was assigned to the complainant for implicating the petitioner in a false case. The complainant was not acquainted with the petitioner prior to the incident. She had no ill-will or animosity to falsely rope him in the case. The complainant being a victim must be interested to bring the real culprit to book. In 313 Cr.P.C. statement, the petitioner admitted his apprehension at the spot. He also admitted that the mobile was recovered from his

possession. However, he took the defence that someone else has snatched the mobile phone and had thrown it on the ground. When it was lifted by him innocently, he was falsely implicated in this case. This defence does not inspire confidence; it deserves outright rejection. The defence pleaded is contrary to the suggestions put to the complainant in the cross-examination. As per PW-3's (ASI Lav Kumar) testimony, the mobile was recovered from the petitioner's pocket.

4. The conviction of the petitioner is based upon fair appreciation of evidence. Concurrent findings of the two courts below warrant no intervention.

5. The petitioner, however, cannot be held guilty under two offences i.e. one under Section 379 IPC and the other under Section 356 IPC simultaneously. The offence proved would fall either under Section 379 IPC or 356 IPC. For a single transaction i.e. snatching of mobile from the complainant, the petitioner cannot be held liable for two distinct offences. He cannot be awarded different sentences in both the offences and that too to run consecutively i.e. one after the other. Consequently conviction under Section 356 IPC is set aside.

6. The revision petition stands disposed of in the above terms. Trial Court record be sent back forthwith with copy of the order. Intimation be sent to Superintendent Jail.

(S.P.GARG)
JUDGE

APRIL 21, 2017/sa