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

DECIDED ON : 3rd FEBRUARY, 2017

+ **CRL.A.1087/2014**

STATE (GNCT OF DELHI) Appellant
Through : Mr.Amit Gupta, APP.

Versus

PRADEEP @ JAAT & ANR. Respondents
Through : Mr.Ashish Bansal & Ms.Kanika
Bhardwaj, Advocates.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Instant appeal preferred by the State for enhancement of the sentence is contested by the respondents.
2. I have heard the learned counsel for the parties and have examined the file. It is a matter of record that both the respondents were convicted in case FIR No.168/2013 PS Dabri. Respondent No.1 was convicted for committing offence punishable under Sections 392/397/34 IPC whereas respondent No.2 was held guilty for committing offence punishable under Sections 392/34 IPC. It is also a matter of record that vide order dated 17.05.2014 both the respondents were ordered to be released on probation on their furnishing personal bond in the sum of ₹10,000/- each with surety in

the like amount for a period of one year. The concerned Probation Officers were directed to keep supervision over the convicts.

3. Learned APP urged that the sentence awarded by the learned Trial Court is inappropriate considering the gravity of the offences whereby an innocent individual was robbed of his mobile and other articles by the respondents along with their associates.

4. Perusal of the Sentence Order reveals that before awarding sentence, the Trial Court had requisitioned reports from the Probation Officers. The detailed report of the District Probation Officer, Mujjafarnagar revealed that respondent No.1 was below 21 years of age on the day of commission of offence; he was educated upto 10th standard; was presently employed in a private service on a monthly salary of ₹10,000/-; the convict belonged to a lower middle class but respectable family; his father was a farmer; his brother was well settled and sister was studying in 8th class; parents were keen to improve the convict.

5. Detailed report of District Probation Officer, Dwarka, revealed that respondent No.2 was aged around 24 years and was presently employed in a private service on a monthly salary of ₹6,200/-; the convict belonged to poor strata of the society and was supporting his wife and two children being the sole bread earner. His brother was in the business of vegetables. The convict did not have any past criminal record.

6. Considering all these facts, the Trial Court in its wisdom, instead of awarding minimum sentence prescribed under Section 397 IPC preferred to grant benefit of probation to both the respondents to help them to re-unite in the social fabric.

7. I find no illegality and material irregularity in the impugned order. Learned Trial Court had applied its mind while awarding sentence and had taken into consideration the detailed reports called from the Probationary Officers. The respondents are not previous convicts and are not involved in any other criminal case. It is relevant to note that before grant of bail, they had remained in custody for sufficient duration.

8. It is further pertinent to note that initially the complainant did not implicate respondent No.1 for 'using' any crime weapon; he was not even medically examined. No harm was caused to the complainant. The complainant did not assign any specific role to the respondents and their two other associates who could not be apprehended during investigation. It is further relevant to note that except mobile, nothing else was recovered from the possession of the respondents. In 313 Cr.P.C. statement it has been fairly admitted by the respondents that the mobile was recovered from respondent No.1. Plausible explanation has been offered that this mobile was purchased by respondent No.1 from someone. All these facts though not relevant for considering respondents' guilt at this juncture in the absence of filing any appeal by them against conviction, are nevertheless relevant to be taken into consideration at the time of awarding the sentence. The respondents were not apprehended at the spot.

9. It is informed that after release on probation, none of the respondents was found indulged in any other criminal activity and they have successfully completed the period of probation.

10. Considering all these facts and circumstances and citation '*Masarullah vs. State of Tamil Nadu*', AIR 1983 SC 654, I find no merit in

the instant appeal to enhance the sentence awarded to the respondents by the Trial Court.

11. The appeal lacks in merits and is dismissed. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

FEBRUARY 03, 2017 / *tr*

