

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

Judgment dated: 13th September, 2017

+ **CRL.REV.P. 270/2017 & CRL.M.(Bail) 647/2017**

SUBHASH CHAND

..... Petitioner

Through: Mr.Soumitra Chatterjee, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Hirein Sharma, APP for State with
SI Jasmer Singh, P.S. Jahangirpuri,
Delhi.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I.S. MEHTA, J.

1. Instant revision petition is preferred by the petitioner under Section 397 Cr.P.C. read with Section 401 Cr.P.C for setting aside the impugned judgments dated 26.11.2016 passed by the learned Additional Sessions Judge-02,North, Rohini Courts, Delhi in criminal appeal No.57463/2016, conviction judgment dated 28.01.2016 passed by the learned Metropolitan Magistrate-04 (North), Rohini District Courts, Delhi and order on sentence dated 04.04.2016 passed by the learned Metropolitan Magistrate-03, Rohini District Courts, Delhi in FIR No.31/08 titled "*State Vs. Subhash Chander*".

2. Briefly facts stated are that on 16.01.2008, information regarding an accident was received by HC Satpal vide DD No.13-A. Thereafter, he alongwith HC Subhash reached the spot but nobody was found but later they came to know that the injured was already shifted to BRJM hospital by PCR van. Thereafter, they went to hospital where they collected the MLC of injured Sanjay (since deceased) and ME of another injured Arjun. On the MLC of Sanjay the concerned doctor had endorsed that the injured was brought dead. The other injured Arjun was fit for statement. The injured Arjun gave his statement narrating the incident and on the basis of his statement, FIR No.31/2008 was registered. After completion of investigation, charge-sheet was filed and the petitioner was charged for committing an offence punishable under Sections 279/337/304-A IPC. The prosecution examined 9 witnesses in order to prove its case.
3. Thereafter, the learned Metropolitan Magistrate after appreciation of the evidence and after considering the contentions of the parties, vide judgment dated 28.01.2016 convicted the petitioner for the offence committed under Sections 279/337/304-A IPC and vide separate order on sentence dated 04.04.2016 sentenced the petitioner to undergo simple imprisonment for a period of three months for offence under Section 337 IPC, one year simple imprisonment for the offence under Section 304-A IPC and three months simple imprisonment for the offence under Section 279 IPC, however,

all the sentences shall run concurrently with benefit of Section 428 Cr.P.C. Besides the substantive punishment, in compliance of directions given by this Court in case titled as *Satya Prakash v. State* dated 11.10.2013, the learned Metropolitan Magistrate also awarded a compensation of Rs.50,000/- (Rupees Fifty Thousand) in total, to the legal representative/heirs of the deceased Sanjay.

4. Aggrieved from the said judgment of conviction dated 28.01.2016 and order on sentence dated 04.04.2016 the petitioner filed an appeal before the Court of learned Additional Sessions Judge-02,North, Rohini Courts, Delhi and the learned Additional Sessions Judge-02,North, Rohini Courts, Delhi while upholding the conviction judgment dated 28.01.2016; vide impugned judgment dated 26.11.2016 in criminal appeal No.57463/2016 modified the compensation amount by reducing the compensation amount to Rs.5,000/- (Rupees Five Thousand).
5. Aggrieved and dissatisfied by the aforesaid impugned judgment dated 26.11.2016 the petitioner has preferred the instant revision petition.
6. During the course of arguments, on instructions, the learned counsel for the petitioner has stated that the petitioner has opted not to challenge the findings of the learned Trial Court on conviction. He, however, prays to modify the order on sentence and to release the petitioner for the period already undergone by him.

7. The learned Additional Public Prosecutor opposes the submissions made by learned counsel for the petitioner and has submitted that the petitioner has already availed the relief from the learned Trial Court.
8. Since the petitioner has given up to challenge the findings on conviction and there is ample evidence to base conviction, therefore, the conviction of the petitioner for the aforesaid offences stands affirmed.
9. On the quantum of sentence, the learned counsel for the petitioner has argued that the petitioner is not a previous convict and belongs to a poor family and that the sentence given by the learned Trial Court is too harsh. It is further submitted that the appellant was awarded imprisonment for 1 year and he has already undergone more than 9 months imprisonment.
10. In ***B. G. Goswami vs Delhi Administration; 1973 AIR 1457, 1974 SCR (1) 222*** the Hon'ble Supreme Court while dealing with the quantum on sentence has observed that:-

“Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act. which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent

and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.”

11. The nominal roll dated 31.08.2017 reflects that the petitioner has already undergone 9 months and 5 days incarceration as on 31.08.2017. The unexpired portion of sentence was 1 month and 18 days on that date.
12. Considering the facts and circumstances of the case and the substantive period already undergone by the petitioner in this case and the fact that he is a 61 years old who is the sole bread earner of his family and has to support his dependants, i.e. his wife and children, and he has realized the mistake committed by him and is remorseful of his act to the society to which he belongs and now he wants to transform himself as well as to the society to a right direction.
13. Therefore, I am of the considered opinion that he should be given a chance to reform himself and his better contribution

in the society to which he belongs to. Consequently, the order on sentence is modified and the period already undergone by him in this case, i.e. 9 months and 17 days, is taken as his substantive sentence for the offence committed under Sections 279/337/304-A IPC.

14. The present revision petition stands disposed of in the above terms. All pending application(s) also stand disposed of. Trial Court record be sent back forthwith along with the copy of the judgment. One copy of the judgment be sent to the Superintendent of Jail for necessary compliance.

I.S.MEHTA, J

SEPTEMBER 13, 2017/sr