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

Judgment dated: 5th June, 2017

+ CRL.A. 1382/2014 & Crl.M.(Bail) 1687/2016, 751/2017

JITENDER KUMAR

..... Appellant

Through: Mr. Biswajit Kumar Patra, Adv.
Mr. Amar Nath, amicus curiae with
Mr. Love Deep Gaur, Adv.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through: Mr. Raghuvinder Varma, APP for State
with SI Dinesh Chandra, PS-Keshav
Puram

CORAM:

HON'BLE MR. JUSTICE I.S. MEHTA

I.S. MEHTA, J (ORAL)

1. The instant appeal is arising out of the judgment dated 25.08.2014 and order on sentence dated 28.08.2014, wherein the appellant Jitender Kumar was convicted for committing offences punishable under Sections 392/394/34 IPC. Aggrieved by the said judgment and order on sentence, the appellant has preferred the instant appeal.

2. Briefly facts stated are that on receiving information vide DD No.58B, dated 29.05.2010 to the effect that three boys riding on motorcycle bearing No.DL-8S-AG-8054 had snatched money, mobile phone and ring near Keshav Puram Police Station. ASI Bhagwat Singh along with Ct. Parvinder reached at the spot, where they met the complainant Harsh Chauhan in injured condition,

who was sent to BJRM Hospital and was medically examined. They recorded the statement of complainant and case was registered being FIR No.176/2010. During the course of investigation, the details of owner of motorcycle bearing No. DL-8S-AG-8054 were obtained and raid was conducted at house of the appellant- Jitender, who was arrested on the identification of complainant. His personal search was conducted and during interrogation he got recovered one motorcycle bearing No. DL-8S-AG-8054, which was used in the commission of aforementioned crime. The appellant-Jitender thereafter made disclosure statement, wherein he disclosed about involvement of other co-accused persons namely Alok @ Lala and Ashish Kumar @ George Bush. After completion of the investigation, charge sheet was filed. After filing the charge sheet, prosecution examined 6 witnesses in order to prove its case. In their defence, the convict persons also examined one witness. Upon appreciation of evidence and after considering the contentions of the appellant and his associates, they all were convicted by the impugned judgment dated 25.08.2014. By an order dated 28.08.2014, the appellant was awarded Rigorous Imprisonment for five years with fine of Rs.1,000/- under Section 392/34 IPC and in default of payment of fine he shall undergo one and half year simple imprisonment. He was also awarded Rigorous Imprisonment for five year under Section 394/34 IPC with fine of Rs.1,000 and in default of payment of fine to undergo one and half year simple imprisonment. Compensation to the tune of Rs.5,000/- was also awarded against each convict persons. All the sentences were to operate concurrently. Being aggrieved and dissatisfied, the appellant has filed the instant appeal.

3. During the course of arguments, on instructions, the appellant's counsel stated that the appellant has opted not to challenge the findings of the Trial Court on conviction. He, however, prayed to modify the sentence order and to release the appellant for the period already undergone by him. Learned

Additional Public Prosecutor has no objection to consider the mitigating circumstances.

4. Since the appellant has given up challenge to the findings on conviction and there is ample evidence to base conviction, the conviction for the aforesaid offences stands affirmed.

5. On the quantum of sentence, learned counsel for the appellant and learned amicus curiae have argued that the appellant is aged about 32 years and he has to maintain his old aged parents. It is further submitted that the appellant is a poor person and he is the sole bread earner of the family and the sentence given by the Court below is too harsh. It is further submitted that the appellant is repenting on his previous conduct and he be given a chance to reform himself. It is submitted that the appellant was awarded imprisonment for 5 years and he has already undergone almost 3 years imprisonment. It is further submitted that a fine of Rs.2,000/- along with compensation of Rs.5,000/- has been imposed on the convict which he could not pay as he is very poor and prays that the fine and compensation so imposed on the convict be waived off.

6. 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.”

7. Nominal roll dated 31.05.2017 reflects that the appellant has already undergone 2 years, 7 months and 29 days incarceration as on 01.06.2017. The unexpired portion of sentence was only 1 year, 7 months and 17 days on that date.

8. Considering the facts and circumstances of the case and the substantive period already undergone by him in this case and the fact that the appellant is a young man of around 32 years, who is the sole bread earner of his family and has to support his dependants i.e. his parents 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, 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 sentence order is modified and the period already undergone by him in this case i.e. 2 years, 7 months and 29 days is taken as his substantive sentence under Section 392/394/34 IPC including for the sentence for default in non payment of fine of Rs.2,000/- and compensation of Rs.5,000/- too.

9. The appeal 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 also sent to the Jail Superintendent for necessary compliance to release the appellant.

JUNE 05, 2017
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I.S. MEHTA
(JUDGE)