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

+ CRL.REV.P. 503/2017, CrI. M.A. no. 11168/2017 & CrI. M.B. no. 1277/2017

BRAHM DEV

..... Petitioner

Through : Mr. Rakesh Srivastava, Adv.

versus

THE STATE NCT OF DELHI

..... Respondent

Through :Ms. Manjeet Arya, APP with
Inspector Rajesh Kumar, P.S. NDRS

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **18.07.2017**

Petitioner was convicted by the trial court under Sections 394/411/34 IPC and sentenced to undergo rigorous imprisonment for two years with fine of ₹10,000/- and in default of payment of fine to further undergo simple imprisonment for two months under Section 394 IPC; and one year simple imprisonment for committing the offence under Section 411 IPC. Both the sentences were directed to run concurrently. Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was also directed to be given to the Petitioner.

Petitioner preferred an appeal before the Additional Sessions Judge, which has been disposed of by the judgment dated 15th April, 2017; whereby

conviction under Section 394 IPC as well as sentence awarded to appellant under the said provision has been upheld. However, conviction of the petitioner under Section 411 IPC has been set aside.

That is how, petitioner is before this Court by way of present Revision Petition under Section 397 read with Section 401 of the Cr.P.C.

There are concurrent findings of fact returned by the Appellate Court as well as Trial Court regarding the conviction under Section 394 IPC, on appreciation of the evidence on record of the trial court.

It is trite law that in the exercise of its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the revisional jurisdiction is Supervisory in nature as exercised by the High Court for correcting the miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion, when the evidence has already been appreciated by the Magistrate as well as by the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the

High Court which would, otherwise, tantamount to gross miscarriage of justice.

Supreme Court in *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand* MANU/SC/0674/2004 has held that in exercise of its revisional power under Sections 397/401 of the Code, the High Court ought not to act as a second appellate court and undertake an in-depth and minute re-examination of the entire evidence and thereafter upset concurrent findings of the trial court and the first appellate court. The Supreme Court cautioned that the High Court is required to exercise self-restraint in a revision petition.

As per the prosecution, victim Pulkit @ Chintu Sharma, a student of Class 10th, had come from Faridabad to Delhi on 3rd April, 2013 in a train, to visit Bangla Saheb Gurdwara. Victim could not de-board at New Delhi railway station as he fell asleep in the train. When he woke up, train had reached at Sadar Bazar railway station. He got down there and started walking along the railway track so as to reach the New Delhi Railway Station. At about 4 PM, when he reached near Pakka Pul, the petitioner along with co-accused, namely, Bhima Yadav asked him to handover whatever money he was having in his possession. Petitioner and co-accused

gave beatings to him. Thereafter, petitioner checked his pocket and removed his LG mobile phone and ₹200/- in cash. He also slapped on his nose. Co-accused Bhima Yadav struck his head on some rod like structure. He fell down on the track. Thereafter, he ran towards the New Delhi railway station, where he contacted the police personnel, inasmuch as, got his statement Ex. PW1/A recorded. PW1 correctly identified the petitioner and the co-accused in Court. Trial court as well as the Appellate Court have found the testimony of PW1 trustworthy and reliable as well as in line with the prosecution case as set up in the charge-sheet. It was held that PW1 had corroborated the prosecution version on material points. Appellate Court has noted that PW1 had described the incident in a manner thereby assigning the specific role to the petitioner and the other co-convict, namely, Bhima Yadav. He had identified them during the investigation, after few hours of lodging of his report Ex. PW1/A. He has also correctly identified the petitioner and the other co-convict in Court. Petitioner and the co-convict were not known to the PW-1 prior to the incident. Also, there was no animosity between the petitioner and the PW-1. There was no reason to discard the testimony of PW1 on the point of commission of offence and identity of the convicts. Appellate Court has noted that discrepancies, as

pointed out in the statement of PW1 recorded in Court viz-a-viz his statement in FIR, were minor and insignificant, inasmuch as, none of the witness was expected to narrate the incident in a parrot like manner.

Learned counsel for the petitioner had contended before the appellate court that in his statement Ex. PW1/A, PW1 had stated that after the incident, accused persons had run away; whereas, while deposing in Court he deposed that he ran away from the spot. In Ex. PW1/A, he stated that when he reached pakka pul at New Delhi Railway Station, he met two persons, who asked him to handover the money; while deposing in Court, he stated that he met two persons and asked them the route to reach New Delhi Railway Station when they robbed him. In Ex. PW1/A, PW1 had stated that one Bhima Yadav had hit his head on the wall; while deposing in Court, he stated that Bhima Yadav stuck his head on some rod like structure. It was further argued that there were material contradictions in the testimony of the PW-1 victim as while deposing in Court, he had stated that ₹190/- was snatched from him while in his statement recorded at concerned Police Station, he had stated that ₹200/- was snatched. Trial court as well as appellate court have rightly held that these discrepancies are not on material points. I am of the view that these discrepancies are not sufficient to discard

the statement of PW1. As regards the involvement of petitioner in the offence is concerned, PW1 has stick to his statement Ex.PW1/A on material points that petitioner and his co-accused, had intercepted him, asked him to handover whatever he was having in his possession and thereafter, petitioner snatched his LG mobile phone, money and they also beat him up. It is noted that petitioner was apprehended on the pointing of PW1 immediately after the incident.

In the above facts and circumstances, I am of the view that conviction of the petitioner has rightly been based on appreciation of evidence by the trial court. Appellate court has also concurred with the findings of the trial court on appreciation of evidence. I do not find the conviction of the petitioner to be based on no evidence nor is it a case in which the findings can be said to be perverse or based on inadmissible evidence, inasmuch as, there does not appear to be any manifest error, illegality, perversity or grave miscarriage of justice.

Revision Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

JULY 18, 2017/rb