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

+ CRL.REV.P. 765/2016

SADIQ

..... Petitioner

Through :Mr. Vivek Sharma, Adv. with
petitioner in person, produced from
judicial custody

versus

STATE

..... Respondent

Through :Ms. Manjeet Arya, APP with SI
Anand Kumar, P.S. Mehrauli

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **01.09.2017**

Petitioner was convicted under Sections 356/379 IPC by the learned Metropolitan Magistrate, Delhi and sentenced to undergo rigorous imprisonment of two years for each of the offences besides paying compensation of ₹10,000/- to the complainant. Both the sentences were directed to run concurrently and benefit of Section 428 Cr.P.C. was also given to petitioner.

Petitioner preferred an appeal before the Additional Sessions Judge, which has been dismissed vide judgment dated 25th October, 2016 passed by the Additional Sessions Judge/Special Judge, CBI – 03 (PC Act), South

District, Saket Court, New Delhi.

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

There are concurrent findings of the two courts, that is, Trial Court and Appellate Court against the petitioner, on appreciation of evidence.

. It is trite law that a Revision Petition cannot partake the status of an appeal. Evidence adduced before the trial court is not to be sifted and weighed by the High Court while exercising the revisional jurisdiction so as to superimpose its own finding as against the findings returned by the trial court and the Appellate Court. High Court has only to see as to whether there is any violation of legal principles or whether the findings returned by the trial court on the evidence adduced are palpably perverse. This principle has been enunciated by this court and the Supreme Court in several judgments.

In State of Orissa v. Nakula Sahu and Ors. MANU/SC/0178/1978, Supreme Court has observed thus:

“That the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In State of Kerala v. Puttamana Illath

Jathavedan Namboodiri MANU/SC/0100/1999 : 1999CriLJ1443 it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even 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 on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice."

In State of Kerala vs. Putthumana Illath Jathavedan Namboodiri

MANU/SC/0100/1999, Supreme Court has observed thus:

"In 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 jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even 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 on the same when the evidence has already been appreciated by the Magistrate as well as 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. On scrutinizing the impugned Judgment of the High Court from the

aforesaid stand point, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by re-appreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent.”

As per the prosecution, on 25th September, 2010 at about 8:20 PM, near traffic lights, 100 foota road, Mehrauli, New Delhi, used criminal force against the complainant PW2 Smt. Bimla Devi and snatched her gold chain from her neck. At that time, PW1 Shri Janak Raj Nagar, husband of Smt. Bimla Devi, was also present there. They were sitting in the car when petitioner approached the car and snatched the gold chain and ran away. Petitioner was apprehended subsequently. He refused for TIP. PW1 and PW2 have identified the petitioner in Court. Trial Court and Appellate Court have found their testimonies to be trustworthy and reliable.

During the course of hearing, learned counsel for the petitioner has failed to point out any flagrant violation of legal principles nor is it a case that the conviction is based on no evidence. There is no perversity in the impugned judgment. After arguing for some time, learned counsel for the petitioner has given up challenge to the conviction of the petitioner, on

instructions of the petitioner, present in Court.

Learned counsel has only prayed for leniency in the sentence. It is contended that petitioner's father is aged about 55 years and his mother is also old. Both of them are dependent on the petitioner financially and emotionally. They are not keeping good health and suffering from old age problems. Petitioner also has two children aged about 4 year and 10 year respectively and his wife is a house-wife. Petitioner has already completed sentence of about 13 months. Petitioner belongs to a poor family and his family is at the verge of starvation in his absence. Petitioner is not having any past criminal record. Learned APP has contended that sentence of the petitioner may not be reduced since incidents of chain snatching are increasing day by day. However, it has been admitted that petitioner has no past criminal record.

I have considered the rival contentions of the parties. In my view, purpose of awarding substantive sentence of imprisonment is two folds. It is both reformatory and punitive. As far as punitive part is concerned, petitioner has already suffered incarceration of more than 13 months. He has no past criminal record. His jail conduct is satisfactory. During the trial, petitioner was on bail but he did not indulge in any other crime of

similar nature or any other offence. Family of the petitioner is stated to be at the verge of starvation, inasmuch as education of his children is also suffering.

Keeping in mind the facts and circumstances of this case, as detailed above, while upholding conviction of the petitioner, his sentences are reduced to the period already undergone by him. Petitioner be released from the jail, subject to, however, his producing the proof of deposit of compensation and if he is not required in any other case.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

SEPTEMBER 01, 2017

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