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

+ CRL.REV.P. 505/2017, Crl. M.A. 11263/2017 & Crl. M.B. No. 1289/2017

DILAWAR

..... Petitioner

Through :Mr. Jayant K. Sud, Sr. Advocate with  
Mr. Siddharth Bhaili, Mr. Honey  
Khanna, Mr. Manish Lamba, Mr.  
Rakshit, Ms. Vaishali Soni and Mr.  
Manish, Advs.

versus

STATE

..... Respondent

Through : Ms. Meenakshi Dahiya, APP with SI  
Anuj Singh, P.S. H.N. Din.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **19.07.2017**

Petitioner was convicted under Sections 379 read with Section 511 IPC by the trial court vide judgment dated 4<sup>th</sup> January, 2017 and vide order on sentence dated 2<sup>nd</sup> March, 2017, he was sentenced to undergo rigorous imprisonment for one year with fine of ₹3,000/-; and in default of payment of fine to undergo simple imprisonment for one month. Petitioner filed an appeal, which has been dismissed by the Additional Sessions Judge, Saket Courts, New Delhi vide judgment dated 30<sup>th</sup> May, 2017.

That is how, petitioner is before this Court by way of present revision

petition under Sections 397/398 read with Section 401 of the Cr.P.C.

As per the prosecution, petitioner along with his accomplice was trying to commit theft of Scorpio car no. DL-3CAS-1420 on 25<sup>th</sup> September, 2013 between 11:30 and 12:00 pm, however, he was apprehended by the police officials, that is, PW5 and PW6, who were on patrolling duty in the area. He was arrested in the presence of complainant PW1 Sanjeev Sharma, owner of the vehicle NO.DL-3CAS-1420. Trial court as well as Appellate Court have found the testimonies of PW1, PW5 and PW6 to be trustworthy and reliable, inasmuch as, concluded that prosecution had succeeded in proving its case that petitioner had attempted to commit theft of Scorpio car bearing no. DL 3CAS-1420.

As per the statement of aforesaid witnesses also, petitioner along with his accomplice, had come in the Santro car and parked the same near the Scorpio car of PW1. PW5 SI Narender and PW6 Constable Shiv Charan were on the patrolling duty and found the Santro car standing besides one Scorpio car no. DL-3CAS-1420 in a suspicious condition. The police officials knocked the door of the Santro car, at which petitioner's accomplice fled with the Santro car. However, petitioner was apprehended while trying to climb on the railway fence shortly thereafter. PW1 Shri

Sanjeev Sharma, owner of Scorpio car, also reached the spot. Lock of the Scorpio car was found cracked and the bonnet was open. PW5 SI Narender and PW6 Constable Shiv Charan have duly corroborated the version of PW1 Shri Sanjeev Sharma.

There are concurrent findings of the courts below. 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 a catena of judgments.

Supreme Court in *Duli Chand v. Delhi Administration* MANU/SC/0113/1975, examined the scope of invoking jurisdiction of the High Court in criminal revision and held as under:

“The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the

Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere.”

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.”

I have perused the statements of PW1, PW5 and PW6 meticulously and am of the view that trial court as well as appellate court have rightly

held that their testimonies were trustworthy and reliable, inasmuch as, the prosecution had proved its case beyond the shadow of reasonable doubts that that petitioner had attempted to steal the Scorpio car bearing no. DL 3CAS-1420.

Learned Senior Counsel for the petitioner submits that testimony of PW1 is totally untrustworthy, unreliable and believable. I do not agree with this contention of the learned senior counsel. PW1 has categorically deposed that he was walking in front of his house at about 11:30-12:00 pm when he saw two police officials standing near a Santro car, which was parked alongside his car. Petitioner and his accomplice reversed the Santro car. Police officials tried to stop them. At that time, he was 100 meters away from his car. He reached near his car before the police officials reached there and saw that the lock of his car was cracked inasmuch as, the bonnet of his car was open. He further deposed that police officials apprehended the accused near the railway railing. He identified his signatures on the personal search memo and arrest memo of the accused, Ex. PW1/B and Ex. PW1/C respectively. PW5 and PW6 have deposed in line with PW1 except with some minor variations, which are not significant and sufficient to disbelieve the prosecution case.

It is not the case where conviction has been based on no evidence nor is it a case in which the findings returned by the courts below can be said to be perverse. Also, there does not appear to be any manifest illegality, perversity and miscarriage of justice.

For the foregoing reasons, Revision Petition is dismissed. Miscellaneous applications are disposed of as infructuous.

**A.K. PATHAK, J.**

**JULY 19, 2017**

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