

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR-2380 of 2018(O&M)
Date of Decision: 24.07.2018**

Taro & anr.

....Petitioners

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. SS Gill, Advocate, for the petitioners.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, the petitioners have assailed the judgment of the First Appellate Court dated 12.07.2018, whereby judgment of conviction dated 16.12.2017 of the trial Court holding them guilty under Section 379 IPC and order dated 18.12.2017, sentencing them to undergo simple imprisonment for six months each, were affirmed.

According to the prosecution, on 04.08.2015, the complainant while returning his village received a call on his mobile. Therefore, he parked his motorcycle by the side of the road to respond the call. Out of the two ladies standing behind him, one took out Rs.3200/- from back pocket of the trouser of the complainant. When the complainant turned back and saw his money in the hand of one lady, he demanded his money back from her, on which both the ladies started rebuking and threatening him to implicate him in a false case. On raising alarm by the complainant that he had been robbed, both the ladies were caught by the passersby. On asking, they disclosed their names as Saroj and Taro (petitioners).

Resultantly, the petitioners were booked under Section 379 IPC

for committing the said offence.

After holding the trial, the trial Court convicted both the petitioners under Section 379 IPC and sentenced them as narrated above in the opening para of this judgment vide impugned judgment of conviction dated 16.12.2017 and order of sentence dated 18.12.2017.

Being aggrieved, the petitioners preferred appeal, but remained unsuccessful as their appeal was dismissed vide judgment dated 12.07.2018 by the First Appellate Court.

Learned counsel for the petitioners *inter alia* contends that according to the complainant, Rs.3200/- was taken out by one lady from his pocket, but the police has shown the recovery of Rs.1600/- each from both the petitioners. There is no evidence on record as to when the petitioners distributed/divided the amount of Rs.3200/- amongst them, when they had already been apprehended on the spot by the passersby, which falsifies the prosecution story. Both the petitioners have 4-5 children each respectively. According to the prosecution story, the recovery of Rs.1600/- each was effected from both the petitioners after recording their disclosure statement, contrary to the statement of the complainant PW-3 Mahabir that the petitioners were apprehended at the spot with the money. Therefore, the alleged recovery from the petitioners after recording their disclosure statements is false and concocted by the police. Non-production of case property during trial is also fatal to the prosecution case. There is a major contraction in the statement of official witnesses, inasmuch as according to PW-1 Lady Head Constable Sudesh, the disclosure statements of the petitioners were recorded after effecting recovery from them, contrary to the deposition of investigating Officer PW-4 ASI Sewa Singh, that recovery

was effected after recording the disclosure statements of the petitioners.

Having considered the submissions made by learned counsel for the petitioners, I find that the instant petition is completely devoid of merits for the reasons to follow:-

Both the petitioners were apprehended at the spot with the amount of Rs.3200/-, which they have taken out illegally from the pocket of the complainant. Therefore, alleged false implication of the petitioners is not possible. That apart, recovery of Rs.3200/- from the petitioners is in consonance with the statement of the complainant that the same was taken out from his pocket. Resultantly, the prosecution has been able to prove his case beyond any shadow of doubt. Both the petitioners, being caught at the spot, were identified by the complainant. Despite lengthy cross-examination of the complainant, the testimony of the petitioners could not be impeached.

More so, considering the maximum punishment, which can be awarded under Section 379 IPC, is upto maximum three years. Therefore, the sentence of the petitioners to undergo simple imprisonment for six months is not disproportionate to the act, which they had committed, rather is on lower side.

In view of above, the petitioners do not deserve any concession of probation.

Dismissed.

July 24, 2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No