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

+ CRL.REV.P. 103/2018

MAHIPAL SINGH

..... Petitioner

Through: Mr.Prakash Airan, Advocate.
Petitioner Mahipal produced from JC.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Dr.M.P.Singh, APP for the State with
SI Sandeep Kumar from PS-
Ambedkar Nagar, SI Mahendra from
PS-Adarsh Nagar, SI amit Kumar
from PS-Krishna Nagar and ASI
Brijeshwar from CAW Cell, East.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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09.10.2018

1. Petitioner was convicted by the trial court under Section 325 IPC and sentenced to undergo simple imprisonment for 24 months with fine of ₹2,000/- and in case of default of payment of fine to further undergo simple imprisonment for 7 days. Aggrieved by the said conviction as well as sentence, petitioner preferred an appeal before the Additional Sessions Judge, Delhi which has been dismissed by the judgment dated 7th December, 2017.

2. That is how the petitioner is before this Court by way of present Revision Petition under Section 397 of the Code of Criminal Procedure, 1973.

3. It is trite law that in exercise of revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal. High Court cannot substitute a finding of fact as against what has been arrived at by the two courts below, on appreciation of evidence. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioner has failed to point out any perversity and/or illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

4. As per the prosecution, injured Nafis Ahmad was examined before the trial court as PW4. He supported the prosecution version and he deposed that on 29.01.2004 at about 04:00 PM, he along with his brother was sitting in his shop no.R-28, Azadpur, when Bhagwan Dass, who use to sell chhole kulche in front of their shop, came there and told them that petitioner

(Mahipal Singh) was not paying money for the chhola kulche purchased by him. He (PW4) further deposed that he went out of his shop and asked the petitioner as to why he was not paying money to Bhagwan Dass. At this, petitioner got infuriated and hit on his face with a brick, as a result whereof he sustained injuries. His two teeth were broken and upper lip was also cut. The petitioner thereafter ran away. PW4 further deposed that he was taken to hospital where MLC was prepared. In his cross-examination, PW4 stated that the petitioner was arrested at the spot. He denied that the injuries were self inflicted. Brother of PW4 was examined as PW3. He also corroborated the version of PW4. Mr.Bhagwan Dass was examined as PW5. He also corroborated the version of PW4. All of them corroborated the prosecution story as set out in the charge sheet.

5. MLC of injured was proved as PW1/A. PW1 Dr. Abhilasha deposed that on examination of the patient Nafis Ahmad, she found that there is healing socket present with upper central incisors. A perusal of MLC reveals that the injured had suffered loss of two incisor teeth in upper jaw and there was cut on the upper and lower lip. The medical evidence corroborated the statements of aforesaid PWs.

6. Trial court as well as Appellate Court have scrutinised the evidence

on record and found the testimonies of aforesaid PWs trustworthy and reliable and concluded that prosecution had succeeded in proving that petitioner had committed offence under Section 325 IPC.

7. During the course of hearing, learned counsel for the petitioner has failed to point out any violation of legal principles nor is it a case of no evidence. After arguing for some time, learned counsel for the petitioner, on instructions, has given up challenge to the conviction of petitioner. The only relief pressed at the time of hearing is about reduction in sentence of the petitioner. It is contended that petitioner is not involved in any other case. During the trial, petitioner was on bail which concession he has not misused. Petitioner's wife is an illiterate lady and, thus, totally dependent on the petitioner. Petitioner has four minor children. The education of children of petitioner is also suffering for lack of finances. Petitioner is the sole bread earner of the family. Therefore, sentence of the petitioner may be reduced to the period already undergone by him.

8. It is trite law that purpose of awarding sentence of imprisonment is twofold; one is punitive and other is reformatory. It is not necessary that in each and every case the maximum sentence has to be awarded. In *State GNCT of Delhi vs. Mukesh*, 2011 (3) Crimes 111, a Division Bench of this

Court has observed thus: “a proper sentence is amalgamation of many factors such as the nature of offence, the circumstances extenuating or aggravating of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the court in deciding upon the appropriate sentence”.

9. Petitioner has already completed sentence of about one year out of the total sentence of twenty four months. His jail conduct is satisfactory. He has no prior criminal record. Petitioner has a family comprising of his wife and four children who are totally dependent upon him. Keeping in mind the totality of facts and circumstances of this case as detailed above, while

upholding the conviction of the petitioner under Section 325 IPC, his sentence is reduced to one year from 24 months.

10. Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

11. Copy of the order be sent to the concerned Superintendent Jail for serving it on the petitioner and for compliance.

A.K. PATHAK, J

OCTOBER 09, 2018

SSC