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

+ CRL.REV.P. 459/2018

SUNNY

..... Petitioner

Through: Mr. Uday Vir Siingh, Adv.
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent

Through: Ms. Aashaa Tiwari, APP for State
with SI Ashwani, P.S. Jyoti Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **05.09.2018**

1. Petitioner was convicted by the trial court under Sections 354/341 IPC and sentenced to undergo simple imprisonment for two years with fine of ₹10,000/- and in case of default of payment of fine to further undergo simple imprisonment for six months. 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 27th March, 2018, which has been impugned in this petition.
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 its 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. There are concurrent findings of fact returned by the trial court and Appellate Court on appreciation of evidence. This Court is not to sift and weigh the evidence on record to substitute its findings against the concurrent findings returned by the courts below. As per the prosecution, petitioner on 14.06.2014 stopped the complainant at foot-over bridge near Ashok Nagar Bus Stand, Wazirabad Road at about 08:45 pm and molested her. Petitioner was under influence of liquor. He embraced the complainant and touched her breast and legs. On complainant's friend, namely, Meenu raising alarm public gathered there and gave beatings to the petitioner. Complainant was

examined as PW1. She supported the prosecution version. Meenu was examined as PW2. She also corroborated the statement of PW1. Other witnesses examined were formal witnesses being police officials including the investigating officer. Trial court as well as Appellate Court have scrutinised the evidence on record and found the testimony of PW1 and PW2 trustworthy and reliable and concluded that prosecution had succeeded in proving that petitioner had committed offences under Sections 354/341 IPC.

5. 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 based on no evidence, inasmuch as, has given up challenge to the conviction of the petitioner. The only relief pressed in this petition is that sentence of the petitioner may be reduced to the period already undergone by him. It is submitted that at the time of incident petitioner was 19 years old. He is not involved in any other case. During the trial, petitioner was on bail which concession he has not misused by not indulging himself in any other offence. Petitioner's wife is an illiterate lady and, thus, totally dependent upon him. Petitioner has an infant child also who needs care. Petitioner's married sister is also dependent upon him as her husband has deserted her.

Therefore, sentence of the petitioner may be reduced to the period already undergone by him.

6. 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”.

7. Petitioner has already completed sentence of one year out of the total sentence of two years. His jail conduct is satisfactory; he is not involved in any other case; during the trial, he was on bail, which concession he has not misused. Petitioner has a family comprising of his wife, one child and one married sister, who are totally dependent upon him being the sole bread earner of the family.

8. Keeping in mind totality of the facts and circumstances of this case as detailed above, while upholding the conviction of the petitioner under Sections 354/341 IPC, his sentence is reduced to the period already undergone by him. He be released from the jail forthwith, if not required in any other case.

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

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

A.K. PATHAK, J.

SEPTEMBER 05, 2018

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