

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

% Judgment delivered on: 21st December 2018

+ CRL.A. 741/2018, Crl.M.(Bail) 1133/2018 & Crl. M.A.
28866/2018 (for giving benefit of probation)

DILSHAD AHMAD

..... Appellant

versus

THE STATE (GOVT OF NCT) DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellants : Mr.D.D.Pandey, Adv. Mr.Rohit Gupta, Advocate.

For the Respondents : Mr.Sanjeev Sabharwal, Addl. PP for the State
ASI Shailender Singh SOS-I/Crime Branch.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns judgement dated 22.05.2018 convicting the Appellant for the offence under section 411/482 IPC and order on sentence dated 14.06.2018 directing the Appellant to undergo rigorous imprisonment for a period of two years and to pay fine of Rs 5,000/- for offence punishable under section 411 IPC and rigorous imprisonment for a period of one year and to pay fine of Rs 5,000/- for offence punishable under section 482 IPC and in default thereof to undergo simple imprisonment of three months.

2. As per the prosecution on 19/20.12.2015 at about 12:45 am

accused Sunil, Desh Raj and Mohd. Afsar, in furtherance of their common intention, robbed white colour Hundai Verna Car bearing registration number DL10CS-6743 by forcibly removing its keys and a sum of Rs.50,000/-from the pocket of complainant Sh. Sandeep @ Kala (PW3) by threatening him with a pistol on his stomach, when the complainant had got the car to the flower market for decorating it.

3. As per the prosecution on 29.04.2016 the Appellant herein was found to be in possession of the said car which he had kept in courtyard of his house in Village Harsinghpur, PSHafeezpur, Hapur, UP with a fake number plate bearing HR-26 BS-7774.

4. In support of the case, prosecution examined as many as 17 witnesses. ASI Shailender Singh (PW12), has deposed before the trial court that on the basis of secret information, he along with members of police party apprehended Surender @ Goldy and accused Mohd. Afsar, with a swift dzire car without any number plate. On making inquiries, it transpired that the car was stolen property of E-FIR No. 10386 U/S. 379 PS NDLS. After preparing the kalandra (EX. PW12/A) the case property was deposited in PS NDLS and he intimated said PS about the arrest of accused persons. On 21.04.2016, on the basis of secret information, accused Sunil @ Sethi and Deshraj were apprehended from Ramdev Road, outside Balaji Action Hospital and one pistol and cartridge loaded in it, was recovered from the left dub of accused Sunil. Loaded country made pistol was recovered from the left dub of pant of accused Deshraj and the fortuner car in which

the accused persons were traveling was found to have been looted from Gurgaon. A case under the Arms Act against the accused persons was registered. ASI Baljeet Singh (PW13) while carrying out the investigation in the above registered case recorded disclosure statements of accused Sunil and Deshraj (EX. PW13/A and EX. PW13/B) in which they *inter alia* disclosed regarding the robbery of white color Verna Car from flower market, Parwana Road on 28.04.2016.

5. SI Jitender Singh (PW14) reached the spot alongwith ct. Pawan Kumar (PW10). He corroborated the facts as deposed by the PW10. In addition to the documents already proved, he has proved *tehrir* EX. PW14/A, site plan EX. PW14/B before the Trial Court. He has further stated that in the month of April, 2016, he prepared untrace report but on 26.04.2016 information regarding the arrest of accused Sunil @ Sethi who disclosed about his involvement in the present case.

6. HC Praveen (PW15) deposed before the Trial Court that accused Sunil while in police custody was interrogated by SI Karan Singh and he confessed about his involvement in the present case along with his other associates. Thereafter he was arrested (Ex. PW15/A). He further stated that accused Desh Raj was also arrested in the present case on the same day after his confession about his involvement in the present case. Disclosure statement of accused persons were recorded (Ex. PW15/B, Ex. PW15/C respectively). Thereafter, both the accused Sunil and Desh Raj led the police party

consisting of this witness, Ct Mahesh and SI Karan Singh to the spot and pointed out the spot (Ex. PW15/D). He further deposed before the trial court that on 29/04/2016 Dilshad @ Dilshan Ahmad after being interrogated was arrested from front of Sanjay Gandhi Transport Nagar, GT Karnal Road and his personal search was conducted (Ex. PW15/E and Ex. PW15/F respectively). In his disclosure statement (Ex. PW15/G), initially, accused Dilshad disclosed that the Verna car which he had obtained from accused Sunil and Desh Raj is there at Jodhpur, Rajasthan and as such after getting him medically examined, he was produced before the concerned Court and his four days PC remand was obtained. Thereafter, accused Dilshad again disclosed that he had wrongly stated that the said Verna car is at Jodhpur, Rajasthan and rather, he had parked the said car at his residence situated at Village Harsinghpur, Hapur, U.P. and recorded his supplementary disclosure statement Ex. PW15/H. Pursuant to his supplementary disclosure statement, accused Dilshad led the police party to his residence situated at Village Harsinghpur, Hapur, U.P. and got the white Verna car, on which, number plate HR-26BS-7774 was there, which was found parked in the courtyard of his house. IO checked the engine number and chassis number of the said car and the same matched with the robbed car of the present case. Said forged number plates were removed and were seized vide seizure memo Ex. PW15/J after preparing a pullanda and sealing the same with the seal of "AS". The said Verna car along with its key was also seized vide seizure memo Ex. PW15/K.

7. Ct. Mahesh (PW16) corroborated the version of PW15 on the point of joining the investigation on 28.04.2016 and in addition to the documents proved by PW15, this witness also proved arrest memo of accused Deshraj EX. PW16/A, his personal search memo EX. PW16/B, pointing out memo of accused Sunil EX. PW16/C.

8. SI Karan Singh (PW17) stated that on 28.04.2016 he was posted at Special Team, Crime Branch, Prashant Vihar as SI. On that day, investigation of this case was entrusted to him. He also corroborated the versions of PW15 and PW16 on the point of joining the investigation 28.04.2016 and 29.04.2016.

9. Based on the above evidence, Trial Court vide impugned order dated 22.05.2018 *inter- alia* held:

“In so far the accused Dilshad is concerned, it was later on at the instance of Dilshad, the Verna Car was recovered from his residence i.e Village Harsinghpur, Hapur, U.P. It is further proved that the said car was bearing a number plate HR 26 BS 7774 which was found to be fake. Therefore, under these circumstances, I hereby hold the accused Dilshad is hereby held guilty for the offence under section 411/482 IPC.”

10. Appellant has challenged his conviction and sentence by filing the present appeal.

11. Pending the appeal, Appellant has filed subject application under section 360 Cr.P.C. and under section 4 of Probation of

Offenders Act seeking benefit under it.

12. It is submitted by the Appellant that he was incarcerated from the period 29.04.2016 to 16.5.2016 and again was taken into custody on 20.07.2018. Thereafter has been in custody.

13. It is contended that Appellant is the sole bread earner of the family, he has the responsibility of six minor children, wife and aged parents who are suffering from medical ailments. The family of the Appellant has financial stringency.

14. By order dated 02.11.2018 report was called for from the probation officer.

15. Report dated 26.11.2018 has been filed by the probation officer. as per the report, enquiries made have revealed that accused is a well responsible person and was never involved in any kind of offence. Family of the accused comprises of his old parents, who are suffering from age related ailments wife and six children aged between 04 years and 13 years. The probation officer has stated that there is no legal history of the accused except the subject case. No behavioural pattern was observed and has no habit of any kind of addiction.

16. In ***Rattan Lal vs. State of Punjab: AIR 1965 SC 444***, the Supreme Court noted the philosophy behind the grant of probation:-

“The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of

criminal law is more to reform the individual offender than to punish him.....”

17. Court has to consider the circumstances of the case, nature of offence and character of the offender while exercising the power which is discretionary. Powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Court even at appellate or Revisional stage.¹

18. Though the Appellant has been convicted under Sections 411 and 482 of the IPC but in the facts and circumstances of the present case and after considering the nature of the offence, the character of the offender, the report of the Probationary Officer, the Appellant herein leading a disciplined life on the reformed path and the Appellant having a fixed place of abode, I am of the view that this is a fit case for extending the benefit of Section 4 of Probation of Offenders Act to the Appellant.

19. Therefore, while confirming the conviction of appellant under Section 411 and 482 of IPC, it is directed that he be released on probation on entering into a bond, within a period of two weeks from today, in the sum of Rs. 10,000/- with one surety of like amount, before the concerned trial Court, for keeping peace and good

¹ Sitaram Paswan v. State of Bihar; AIR 2005 SC 3534

behaviour for a period of one year. In case Appellant does not maintain good conduct during the period of probation then he shall be liable to undergo the substantive sentence as awarded by the Trial Court.

20. The applications and the Appeal are disposed of in the above terms.

21. Order *Dasti* under the Signatures of Court Master

December 21, 2018

HJ

SANJEEV SACHDEVA, J



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