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

DECIDED ON : 2nd February, 2018

+ **CRL.REV.P. 821/2017, CRL. M. B. 2207/2017, CRL. M. A. 17715-17716/2017**

HARISH KUMAR Petitioner

Through : Mr. Saurabh Kansal, Adv. with
Ms. Pallavi S. Kansal, Adv.

versus

STATE Respondent

Through : Mr. Ravi Nayak, APP

+ **CRL.REV.P. 922/2017, CRL. M. B. 2195/2017, CRL. M. A. 20329/2017**

VEERPAL Petitioner

Through : Ms. Naomi Chandra, Adv.

versus

STATE Respondent

Through : Mr. Ravi Nayak, APP

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present revision petitions have been preferred by the petitioners to challenge the legality and correctness of the judgment dated 01.05.2017 of learned Additional Sessions Judge in Criminal Appeal No. 18/2016, whereby the findings of conviction recorded by the learned Trial Court were endorsed. By a judgment dated 28.01.2016, the learned Metropolitan Magistrate had found both the petitioners

guilty of commission of offences punishable under Sections 457/380/34 IPC. The petitioners were sentenced to undergo rigorous imprisonment for three years under Section 457 IPC and Section 380 IPC with fine of Rs. 5,000/- each. Both the sentences were to run concurrently.

2. I have heard the learned counsel for the parties and have examined the file. On perusal of the record, it reveals that both the accused persons were apprehended at the spot inside the shop belonging to PW1 Vicky at around 4:15 am on 24.03.2012. The petitioners did not deny their apprehension and arrest at the spot. No plausible explanation was offered by them as to why they were present at the spot at odd hours without any specific purpose. Prosecution case is that the petitioners had gained access to the shop in question with an intention to commit theft. The owner of the shop, PW1 Vicky was not present at the shop that time and the petitioners entered the shop by using implements for breaking open the lock. Not only that, the petitioners committed theft of two mobiles which were subsequently recovered from their possession. These mobiles Exhibit P-1 (collectively) were identified by PW1 Vicky in his court statement.

3. Testimony of PW2 Constable Sheesh Ram is crucial, to infer the petitioners' guilt. He deposed that on 23.03.2012 he and Head Constable Naval Singh were on patrolling duty and when they reached at Bhogal flyover at about 4:15 am, they saw a TSR standing opposite the shop situated at 65B and the shutter of the shop was slightly open. He stopped the motorcycle and went near the shop. At that time, a boy came out of the shop and ran away. Thereafter, on search of the shop, they found both the petitioners present inside the shop. On interrogation, the witness came to know that the petitioners had entered

inside the shop for committing theft. The information was conveyed to the police station on which ASI Ganga Prasad and Constable Satish came to the spot. On search of the petitioners, two mobile phones were recovered from them. Apart from above, a rod and a lock were also recovered from possession of petitioner Veer Pal; one screw driver and one lock were recovered from the possession of petitioner Harish. Petitioners did not explain as to how these implements of breaking house came to their possession and why they were carrying it with themselves.

4. No plausible explanation has been offered by the petitioners in their 313 statements. They did not examine any witness in defence to prove as to where else they were at the time of crime.

5. The courts below have dealt with all the relevant aspects and concurrent findings of the court below warrant no interference.

6. The impugned judgment is based on clear appreciation of evidence and the conviction based upon it stands affirmed.

7. The petitioners had intentionally entered inside the shop at odd hours to commit theft. Considering the gravity of offence, the petitioners deserve no leniency and the sentence order needs no modification.

8. The revision petitions being unmerited are dismissed. Trial court records be sent back with the copy of the order. Information be conveyed to the Superintendent Jail.

**S.P.GARG
(JUDGE)**

February 02, 2018/SRwt