

CRR-3770 of 2016

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

CRR-3770 of 2016
Date of Decision: 15.02.2019

Shamsher Singh

...Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. P.K. Chugh, Advocate, for the petitioner.
Mr. Raj Kumar Makkar, Sr. DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Custody certificate filed in Court today is taken on record.

Through instant revision, petitioner has laid challenge to judgment dated 26.09.2016 of the First Appellate Court, affirming the judgment of conviction and order of sentence dated 09.07.2014, holding guilty and sentencing him to undergo rigorous imprisonment for one year and pay fine of ₹500/- under Section 457 IPC; in default thereof to undergo simple imprisonment for 15 days and to undergo rigorous imprisonment for three months under Section 379 read with Section 511 IPC.

Briefly, petitioner was booked, tried, held guilty and sentenced by the trial Court in the manner as narrated above in the opening part of the judgment, on the allegations that in the intervening night of 15/16.08.2011, petitioner did lurking trespass in the bank premises. He was identified through CCTV footage in which petitioner was trying to break open the chest.

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Being aggrieved, petitioner approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide judgment dated 26.09.2016.

Learned counsel for the petitioner *inter alia* contends that entire prosecution story is based on CCTV footage, which is not admissible in the evidence without compliance of Section 65 of the Evidence Act. Only attempt of theft was made. Therefore, petitioner could not have been convicted under Sections 379 and 511 IPC. In support of his contentions, learned counsel for the petitioner placed reliance on the judgment of this Court in ***Ram Kishan Fauji v. State of Haryana***, 2015(2) R.C.R.(Criminal) 289.

On the other hand, learned State counsel, vehemently opposing the above submissions, contends that apart from the CCTV footage, petitioner has made disclosure statement Ex.PW5/B admitting his guilt. Petitioner was identified by bank manager. Photographs prepared on the basis of CCTV footage were compared with original disc. Therefore, provisions of Section 65 of the Evidence Act were very much complied with.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

Considering the fact that petitioner had tried to commit bank robbery by breaking open its locks, he does not deserve any interference in the impugned judgments, which are well-reasoned and convincing being based on appreciation of evidence.

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Question of false implication of the petitioner does not arise inasmuch as complainant is a bank, which had no motive or ill-will against the petitioner to falsely implicate him.

Provisions of Section 65 of the Evidence Act have been very much complied with inasmuch as CCTV camera was taken into possession by the investigating officer during investigation and from running its footage, identity of the petitioner was established. CCTV footage was not handed over by a stranger or third person to the police. Petitioner could prove his false implication by leading some rebuttal to the alleged CCTV footage. Though, he formally denied entire incriminating evidence led against him, but did not lead any evidence in defence to rebut the CCTV footage being guilty in his mind.

Facts and circumstances of the authority cited by learned counsel for the petitioner are not identical to the facts of the present case. Therefore, no benefit of the same can be given to the petitioner.

I have gone through the impugned judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

Copy of this order be sent to learned Chief Judicial Magistrate, Fatehabad, for issuance of arrest warrants of the petitioner to undergo remaining part of sentence.

February 15, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No