

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

**Criminal Revision No.1485 of 2019 (O&M)
Date of Decision: July 26, 2019**

Vishnu Dutt @ Monu

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Ashit Malik, Advocate
for the petitioner (s).

Mr. Raj Kumar Makkar, Sr. D.A.G., Haryana.

SURINDER GUPTA, J.

This is revision against the order passed by learned Sessions Judge, Kurukshetra, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable under Section 411 of Indian Penal Code (for short-IPC) in case bearing FIR No.359 dated 08.07.2016 registered at Police Station Sadar Thanesar, was partly accepted. Learned lower Appellate Court upheld the conviction of petitioner recorded under Section 411 IPC by Additional Chief Judicial Magistrate, Kurukshetra but reduced the sentence awarded by learned trial Court from rigorous imprisonment for three years to rigorous imprisonment for one year.

As per the case of prosecution, a theft in the house of complainant Saravjit Singh took place on 08.07.2016 and on checking one laptop (Dell), golden jewellery and cash were found stolen. The police

the offence punishable under Section 379 IPC. He suffered disclosure statement about the commission of theft in this case along with petitioner. Petitioner was also arrested and he got recovered two gold bangles, four golden '*jhumke*' and currency notes worth ₹500/-. These golden bangles and golden '*jhumke*' were identified by complainant as belonging to him. His co-accused got recovered laptop and two golden bangles belonging to the complainant.

After completion of investigation, report under Section 173 of the Code of Criminal Procedure was filed. On finding a prima facie case, charge for the offence punishable under Section 411 IPC was framed against the appellant and his co-accused to which they did not plead guilty and claimed trial.

In order to prove its case, prosecution examined complainant Saravjit Singh as PW1, ASI Subhash Chand PW2, Head Constable Pritam Lal PW3, Constable Bhajan Singh PW4, Criminal Ahlmad Balinder Singh PW5, Head Constable Lakhan Singh PW6 and Head Constable Rajesh Kumar PW7.

Entire incriminating evidence was put to the appellant and his co-accused Mohit while recording their statements under Sections 313 Code of Criminal Procedure in which they denied the allegations levelled against them and pleaded their false implication.

Relying on the evidence with regard to the recovery of golden jewellery, laptop and cash from the possession of petitioner and his co-accused, learned trial Court convicted both the accused and sentenced them

₹25,000/- each. In default of payment of fine, they were ordered to further undergo rigorous imprisonment for six months each. In appeal filed by petitioner, the judgment of learned trial Court convicting the petitioner for the offence punishable under Section 411 IPC was upheld by learned Sessions Judge, Kurukshetra. However, the sentence of rigorous imprisonment of three years awarded to him was reduced to rigorous imprisonment for one year and sentence of fine was kept intact.

Learned counsel for the petitioner has argued that the case of the prosecution is based on the testimony of official witness, which find no independent corroboration. The complainant has alleged theft of golden jewellery of which no description was given in the FIR. No bills of these articles were produced and there was no mark of identification on these stolen articles. Petitioner was arrested on the disclosure statement of co-accused and recovery of golden jewellery and cash was planted on him.

Both the Courts below, on appraisal of evidence, have recorded specific finding of fact that recovery of golden jewellery i.e. two gold bangles, four gold '*jhumke*' with cash effected from the appellant is duly proved. These articles were identified by complainant as belonging to him. In this revision, I find no reason to disagree with the finding of fact recorded by the Courts below. It is not a case where the petitioner is claiming title over the golden articles recovered from him. There is no reason to discard the testimony of official witnesses regarding recovery of the same from possession of petitioner and statement of complainant identifying the jewellery articles as belonging to him, particularly when

false implication in this case.

On perusal of judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

At this stage, learned counsel for the petitioner has requested for lenient view to be taken against the petitioner stating that he is a first offender and has undergone more than two months of imprisonment by now. Opportunity should be afforded to him to reform himself.

As per custody certificate, petitioner has not been convicted in any other case. However, he is facing trial in case bearing FIR No.893 dated 05.09.2013 registered at Police Station City Karnal for the offences punishable under Sections 380, 420, 381, 467, 468, 471 read with Section 34 IPC. In this case, a house was burgled when the occupants of that house were not there. Later on, petitioner was arrested and stolen articles were recovered from his possession. Learned first Appellate Court has considered in detail the request for leniency in the quantum of sentence and has committed no error while declining the request of counsel for the petitioner to extend him benefit of probation. I am of the considered opinion that the sentence awarded to the petitioner commensurate with the offence committed by him and no interference on this score is called for.

As a sequel of my above discussion, this revision petition has no merits. Dismissed.

July 26, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No