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

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Judgment delivered on: 12.04.2019

+ CRL.REV.P. 346/2019 & CRL.M.A 6173/2019

MD. MISTER

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Dhruv Gupta, DHCLSC Advocate with Mr.
Shaishav Manu, Advocate

For the Respondent : Ms. Meenakshi Dahiya, APP

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns the judgment dated 20.09.2018 whereby the appellate court has dismissed the appeal of the petitioner impugning the judgment of conviction dated 08.06.2018 and order on sentence dated 21.06.2018 whereby petitioner has been convicted for the offence under Section 457 (Part-II)/34 of IPC as well as Sections 380/511/34 of IPC. Petitioner has been sentenced to undergo the rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- for the offence under Section 457(Part-II)/34 of IPC and to rigorous imprisonment for a period of one year and fine of Rs.10,000/- for the offence punishable under Sections 380/511/34 of IPC and in default of payment of fine, to undergo simple imprisonment of one month each.

2. Petitioner impugns the above order to the limited extent of reducing the sentence to the period already undergone. It is submitted by learned counsel for petitioner that the co-accused, who had been ascribed an identical role and awarded identical punishment, has been given the benefit of further reduction of sentence by the appellate court by its judgment dated 19.01.2019 and has since been released.

3. Learned counsel for the petitioner submits that as the role ascribed to both the petitioner and the co-accused is identical and they were identically punished, petitioner should also be granted the same benefit.

4. Learned counsel for petitioner submits that the petitioner does not impugn the judgment on conviction, but is restricting his prayer to reduction of sentence in view of the mitigating circumstances that petitioner is aged about 27 years of age and is the sole bread-earner of his family and has minor children and a dependent wife. It is submitted that petitioner was engaged as a daily wager and the present petition has been filed through legal aid, as he does not have sufficient means.

5. Nominal Roll of petitioner indicates that petitioner has undergone one year, five months and three days of sentence as on 08.04.2019 and earned remission of twenty four days.

6. The case of the prosecution was that a DD Entry was received that theft was being committed by some persons at a house in front of Liberty Cinema. On receipt of information, two Head-Constables went to the spot where they found that another Head-Constable and a Sub-Inspector had already reached alongwith the complainant/victim. When they entered the

house, they found three persons, who were overpowered. Petitioner is one of the three. The three were present with the tools for breaking into a house. They were arrested. Charge-sheet was filed. Prosecution thereafter led its evidence.

7. Petitioner was apprehended from the spot with tools for breaking into the house. He was overpowered. The prosecution has also been able to establish its case beyond reasonable doubt.

8. Petitioner has not impugned the order on conviction. However, on perusal of the record, I am satisfied that the order on conviction does not warrant any interference and does not suffer from any infirmity.

9. The petitioner is aged about 27 years. At the time of the impugned judgment, he had one child and his wife was expecting. He was working as a daily wager. He is the sole bread-earner of the family and his wife and children are dependent on him for their very subsistence. As per the Nominal Roll, he has undergone the sentence of one year, five months and three days out of the total period of sentence of two years and in default, sentence of one month each.

10. Learned counsel for petitioner submits that petitioner does not have the wherewithal to pay the fine.

11. Keeping in view the totality of the facts and circumstances and the mitigating circumstances, while confirming the judgment on conviction, I am of the view that interest of justice would be served in case the sentence awarded to petitioner is reduced to the period of one year and four months for the offence under Section under Section 457(Part-II)/34 of IPC.

12. Accordingly, the sentence awarded to petitioner is reduced to the period of one year and four months for the offence under Section under Section 457(Part-II)/34 of IPC.

13. Petitioner has already undergone over one year and six months of sentence. So, consequentially the petitioner has already undergone the substantive sentence as well as in default sentence. Accordingly, the Petitioner be released, if not required in any other case.

14. Petition is disposed of in the above terms.

15. Order *Dasti* under signatures of the Court Master.

16. Copy of the order be forwarded to the Superintendent of Jail for compliance.

APRIL 12, 2019
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SANJEEV SACHDEVA, J

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