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

Date of Decision: 16.07.2019

+ **CRL.REV.P. 700/2019**

IN THE MATTER OF:

MOHAN SINGH

..... Revisionist

Through: Mr.Hemant Kumar, Mr.Sahil
Dabla and Ms.Aarushi, Advocates
along with revisionist produced in
custody

versus

STATE

..... Respondent

Through Mr. Sanjeev Sabharwal, APP for
State with SI Rajender and ASI
Shashi Bhushan.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J (ORAL)

1. The present revision petition has been instituted on behalf of the revisionist challenging the impugned judgment passed in Criminal Appeal No.111/18 arising out of case No.137/17 in challan No. 2841-04250 under Sections 184, 185, 146/196 and 115/190 (2) of Motor Vehicles Act (in short 'MV Act').

2. That after the trial, the revisionist was convicted vide judgment dated 27.01.2018 passed by the MM-06 (SE), Saket Courts, New Delhi and vide order dated 05.02.2018 sentenced him as under:-

(i) To undergo simple imprisonment for 04 months for

commission of offence under Section 185 of MV Act.

- (ii) To pay a fine of Rs.1,000/- each for commission of offence under Section 184 MV Act and 146/196 of MV Act.
- (iii) To pay a fine of Rs.500/- for commission of offence under Section 115/190(2) of MV Act.
- (iv) In default of payment of fine, to undergo further simple imprisonment for 07 days.

3. The above judgment passed by the MM was challenged by the revisionist through Criminal Appeal No.111/18. The Appellate Court, vide judgement dated 28.05.2019 upheld the conviction of the revisionist but reduced the sentence awarded to him from SI for 4 months to SI for 2 months under Section 185 M.V. Act.

4. The facts as noted by the Appellate Court are that on 10.04.2017 at about 08:40 PM, the revisionist was found driving a motorcycle bearing No. DL-5SAP-8273 in a zig-zag manner while he was coming from the side of Apollo and going towards Maharani Bagh. The revisionist was checked through breath analyzer and the alcohol content was found to be 162 mg/100ml. The revisionist was not able to produce the Pollution Under Control Certificate (PUC) and Insurance paper at the spot and therefore, he was challaned for the offences under Section 146/196, 115/190 (2), 184 and 185 of the M.V. Act.

5. During the trial, SI Udaibir Singh appeared as PW-1 and deposed that he was on duty at Ashram Chowk along with Ct. Omveer. He further deposed that the revisionist was found driving Motor Cycle bearing registration No. DL-5SAP-8273 in a zig zag manner. On being tested, the alcohol meter device displayed a reading of 162 mg/100 ml of blood. The

printout of the blood test was exhibited as Ex.PW-1/A. The revisionist was found driving the vehicle without insurance and fitness certificates.

6. Ct. Omveer Singh appeared as PW-2 and his testimony is cumulative to the testimony of PW-1.

7. Learned counsel for the revisionist has argued that the Trial Court as well as the Appellate Court have overlooked the inconsistencies in the statements of the witnesses. He has pointed out that whereas PW-1 during his cross-examination stated that the revisionist had blown only once in the alcohol meter but on the other hand PW-2 stated that the revisionist had blown 3-4 times. He has also submitted that the breath analysing test was not done in terms of the procedure laid down under law. He also submitted that the signatures of the revisionist ought to have been taken before testing his blood to remove any suspicion as to whether the alcohol meter had zero reading before it was used. In the alternative, learned counsel submitted that he would not press the petition on merits and would pray that the revisionist be released on the period already undergone by him in jail.

8. The counsel for the revisionist further submitted that the revisionist is the sole bread earner of the family and has to support his wife, two minor daughters and an aged mother who are dependent on him. He also submitted that fine amount of Rs. 2,500/- has already been paid.

9. I have heard learned counsel for the revisionist and perused the record.

10. The revisionist, during the trial, did not deny that he was not driving the vehicle i.e. Motor Cycle bearing registration No. DL-5SAP-8273 on

10.04.2017. A slip of breath analyser was produced which showed that it was calibrated on 23.03.2017 and within 18 days of the same, the accused was challenged on 10.04.2017. No motive could be alleged or attributed to the traffic police officials. The revisionist has also not taken any defence that he was under any medication for cold or consumed any medicine which had alcohol contents. He also did not lead any evidence to show that the breath analyser was faulty.

11. I do not find any illegality or perversity in the two concurrent judgments passed by the lower courts. The conviction of the revisionist is upheld and the revision petition filed by the revisionist is hereby dismissed being devoid of any merits. However, considering the fact that the revisionist is incarcerated since 06.06.2018 and as per the nominal roll dated 05.07.2019 he has been in custody for 1 month and also that he is about 39 year of age and has family to support, his sentence is modified and reduced to the period of 1 month and 15 days.

12. The Trial Court Record be sent back forthwith along with a copy of this order and copy thereof be also sent to the Jail Superintendent, Tihar for information and necessary compliance.

DASTI.

**MANOJ KUMAR OHRI
(JUDGE)**

JULY 16, 2019

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