

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

CRL.REV.P. 958/2019

Reserved on : 05.11.2019

Date of Decision : 18.11.2019

IN THE MATTER OF:

LIYAKAT ALI

..... Petitioner

Through: Mr. Sudhir Kumar Roy, Adv.

versus

STATE

..... Respondent

Through: Ms. Radhika Kolluru, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. By way of present revision petition, the petitioner has challenged his conviction and sentence for the offences punishable under Sections 304-A/279 IPC.

2. Vide judgment dated 26.09.2017, the trial court convicted the petitioner for the offences punishable under Sections 279/304A IPC and vide order on sentence dated 09.11.2017 he was sentenced to undergo imprisonment for one year and fine of Rs.10,000/- under Section 304A and in default to undergo SI for 3 days. Petitioner was also sentenced to undergo SI for six months for the offence under Section 279 IPC.

3. In appeal, vide judgment dated 08.07.19, the conviction of the petitioner was upheld. However, the sentence for the offence under Section 304-A IPC was modified to SI for six months and for the offence under Section 279 IPC was modified to SI for 3 months. The rest of the sentence awarded by the Metropolitan Magistrate was upheld. All the

sentences were directed to run concurrently. It was noted that fine of Rs.10,000/- was paid before the trial court.

4. A perusal of the impugned judgment passed by the Addl. Sessions Judge reveal that the same was passed without discussing the merits of the case and rather by recording a concession of the counsel for the appellant to the effect that appeal was not pressed on merits and only order on sentence passed by the Metropolitan Magistrate, was challenged. The relevant portion of the impugned judgment is reproduced below :-

“2. During the course of arguments, ld. Counsel for the appellant has submitted that he is not challenging the judgment of conviction dated 26/06/2017, but is merely challenging the order on sentence dated 09/11/2017, whereby the appellant was sentenced to undergo imprisonment for a period of one year for the offence u/s 304A IPC with fine of Rs.10,000/-, ID three days SI and was further sentenced to undergo imprisonment for six months for the offence u/s 279 IPC.

3. Since during course of arguments ld. Counsel for the appellant has submitted that he is not pressing the impugned judgment dated 26/09/2017, accordingly the conviction of the appellant u/s 279/304A IPC vide said judgment is upheld.”

5. In the case of Jeetu and Ors. v. State of Chhattisgarh reported as **(2013) 11 SCC 489**, while placing reliance on the case of State of Uttar Pradesh v Chandrika reported as **(1998) 8 SCC 638**, it was held as under:

“8.....It is settled law that on the basis of plea bargaining the court cannot dispose of the criminal cases. The Court has to decide it on merits. If the accused confesses his guilt, an appropriate sentence is required to be imposed. Further, the approach of the court in appeal

or revisions should be to find out whether the accused is guilty or not on the basis of the evidence on record. If he is guilty, an appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced.” [Emphasis Supplied]

6. Further, in the case of Jeetu(supra) it was held as under-

“20. In Padam Singh v. State of U.P (2000) 1 SCC 621, it has been held that in an appeal against conviction, the appellate court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion.

21. At this stage, we may refer with profit to a two-Judge Bench decision in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. And Another (2007) 6 SCC 528 wherein this Court, after referring to the pronouncements in Babu Rajirao Shinde v. State of Maharashtra 1971 3 SCC 337 and Siddanna Apparao Patil v. State of Maharashtra (1970) 1 SCC 547, opined thus(Dilip S. Dhanukar case, SCC pp538 & 552,paras 12 & 66) :-

“12. An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.

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66. *The right to appeal from a judgment of conviction vis-à-vis the provisions of Section 357 of the Code of Criminal Procedure and other provisions thereof, as mentioned hereinbefore, must be considered having regard to the fundamental right of an accused enshrined under Article 21 of the Constitution of India as also the international covenants operating in the field.”*

22. *Tested on the touchstone of the aforesaid legal principles, it is luminescent that the High Court has not made any effort to satisfy its conscience and accepted the concession given by the counsel in a routine manner.*

23. *At this juncture, we are obliged to state that when a convicted person prefers an appeal, he has the legitimate expectation to be dealt with by the Courts in accordance with law. He has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. That apart, he has embedded trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the Courts in reaching a correct conclusion. Therefore, it is the obligation of the Court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. We are compelled to note here that we have come across many cases where the High Courts, after recording the non- challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. We may clearly state that the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with*

serenity in accordance with the established principles of law.

24. Ex consequenti, the appeal is allowed and the judgment and order passed by the High Court are set aside and the appeal is remitted to the High Court to be decided on merits in accordance with law. As the Appellants were on bail during the pendency of the appeal before the High Court and are presently in custody, they shall be released on bail on the said terms subject to the final decision in the appeal.”

7. In view of the above enunciation of law, the impugned judgment passed by the learned ASJ-04, North Distt. Rohini Court, Delhi in CA 153/2017 (CNR No. DLNT-012821-2017) is set aside. The aforesaid CA is restored to its original number. The matter is remitted back to the concerned court to be decided on merits in accordance with law after hearing both the parties. As per the nominal roll, the petitioner was on bail till the passing of the impugned judgment and was taken in custody on 08.07.2019, i.e. the date of the impugned judgment. Accordingly, the petitioner shall be released on bail by the concerned court on the same terms and conditions till the pendency of the appeal.

8. It is directed that the aforesaid CA 153/2017 be listed on 22.11.2019 before the concerned Court. A copy of this order along with records of the case be sent to the concerned court through Special Messenger.

9. The revision petition is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 18, 2019

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