

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1651-2019 (O&M)
Date of decision: 10.02.2021

Devender Kumar

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Arun Singal, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting aside the judgment of conviction dated 05.07.2016 and the order of sentence dated 08.07.2016, vide which the petitioner was convicted for the offences punishable under Sections 380 & 457 of the Indian Penal Code (for short 'IPC') and was sentenced to undergo rigorous imprisonment for a period of 02 years along with a fine of Rs.3,000/- and in default of payment of fine, the petitioner was further ordered to undergo simple imprisonment for a period of two months and the judgment dated 20.04.2019 passed by the Sessions Judge, Panipat, vide which the appeal filed by the petitioner against the judgment of conviction and order of sentence, was dismissed.

Brief facts of the case are that on 03.11.2014, a written complaint

was submitted by Inspector Manoj Kumar, CISF, posted at Indian Oil Corporation Limited (for short 'IOCL') Unit Panipat, alleging therein that on the intervening night of 02/03.11.2014, CISF Constables Dheeraj Kumar and Umesh Kumar Ojha were performing night duty and were patrolling. At about 3.50 A.M., when they had reached near Warehouse No.12, they heard some noises coming from inside the warehouse. They jumped over gate of the warehouse and found two persons while cutting cables. On seeing the Constables, one of those two persons succeeded in fleeing, whereas the other was apprehended by them. They had given intimation about the incident to Inspector Magan Singh, who immediately reached a the spot and then informed Sub Inspector Shri R.S.Tiwari through control room. They also reached at the spot and made search, but could not find the second person. The person, who had been apprehended, disclosed his name as Devender Kumar and gave other particulars. He was not having any permission to enter inside the warehouse. He was caught red-handed, while cutting copper cables. He had cut 18 meters of copper cable in the warehouse, after jumping over the wall and admitted that he had entered inside the warehouse with intention of committing theft. The complainant alleged that 12 pieces of copper cable, which totally measured 18 meters long, two saws, one cutter and 12 blades were recovered from the spot. The same were shown to the management of IOCL and Shri S.K. Roy, Officer of IOCL identified the same to be its property. The value of the cut cable was assessed to be Rs.45,515/-. A certificate was issued on 03.11.2014 by IOCL in this regard. On this complaint, a case under Sections 380 and 457 IPC was registered. Investigation proceedings were initiated. The accused was formally arrested. He was interrogated and suffered disclosure statement. He also got

recovered two mobile phones, which were stated to have been stolen by him from the warehouse. He demarcated the place of occurrence. After completion of necessary investigation and usual formalities, challan under section 173 Cr.P.C. was presented in the Court for trial of the accused.

After completion of the investigation, challan against the accused persons was presented before the trial Court. Finding a prima facie case, charge under Sections 380/457 IPC was framed against the accused, to which they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW1 ASI Yoginder, PW2 Magan Singh, CISF, PW3 Inspector Manoj Kumar, CISF Unit IOCL, Panipat, PW4 ASI R.S. Tiwari, CISF Unit IOCL, Panipat, PW5 Constable Umesh Kumar Ojha, PW6 S.K. Roi, Senior Materials Manager, IOCL and closed the evidence.

After conclusion of the prosecution evidence, statement of accused persons was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, which the prosecution produced against them, was put to tender explanation for the same. The petitioner denied the allegation of the prosecution and pleaded false implication. In defence, the accused did not produce any evidence.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, vide judgment of conviction dated 05.07.2016 and order of sentence dated 08.07.2016, convicted and sentenced the petitioner/accused under Sections 380/457 IPC. Thereafter, the petitioner filed an appeal before the Court of Sessions, which was also dismissed.

Learned counsel for the petitioner, at the very outset, submits that

since out of total sentence of two years awarded by the trial Court, the petitioner has already undergone 01 year, 07 months and 27 days of total sentence including remission, he does not want to address arguments on merits and prays that sentence of the petitioner may be reduced to the period already undergone by him.

Learned counsel for the petitioner, in support of his arguments, has further submitted that the petitioner is first offender and he is not involved in any other case. It is further submitted that the petitioner is a poor person and has his own family to support; he has faced the agony of protracted trial and the trial Court has not granted the benefit of Probation of Offenders Act, therefore, by taking a lenient view, the sentence awarded to the petitioner may be reduced to the period already undergone by him.

Learned State counsel has filed the custody certificate dated 09.02.2021 in the Court today and has not disputed the fact that the petitioner has undergone 01 year, 07 months and 27 days of total sentence including remission, out of two years R.I. awarded by the trial Court.

After hearing learned counsel for the parties, I uphold the judgment of conviction passed by the trial Court, as the same is based on appreciation of prosecution evidence, however, considering the fact that the petitioner has faced the agony of protracted trial; he has already undergone 01 year, 07 months and 27 days of total sentence and also in view of the fact that he is a poor person and has his own family to support, the present revision petition is partly allowed and sentence awarded to the petitioner is reduced to the period already undergone by him i.e. 01 year, 07 months and 27 days. However, the imposition of fine of Rs.3,000/- is upheld. The petitioner is directed to deposit the fine, if

not deposited so far, within a period of 02 months from today.

Since the petitioner is in judicial custody, he be released forthwith,
if not involved in any other case.

10.02.2021

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[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No