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

CRR-1071-2021 (O&M)

Date of decision : 27.09.2021

Taslim and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rahul Jaswal, Advocate for the petitioners.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment dated 16.03.2017 and order on quantum of sentence dated 17.03.2017 vide which the Chief Judicial Magistrate, Panipat had in FIR No.1352 dated 03.10.2015 convicted the present petitioners under Section 379 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) and had sentenced them to undergo rigorous imprisonment for a period of two years; and also to the judgment dated 05.08.2021 passed by the Sessions Judge, Panipat vide which the conviction of the petitioners under Section 379 of the IPC had been affirmed in appeal but however, the sentence had been reduced from 2 years rigorous imprisonment to 6 months rigorous imprisonment.

The brief facts of the prosecution case are that on 03.10.2015, a written complaint was submitted by the complainant-Balkish alleging therein that she was owner of Auto-Rickshaw bearing registration No.HR-67B-8008 and the same was a 2015 make. It was her case that on 02.10.2015, at about 8:30 pm, she had parked her vehicle in front of her house and when she woke up the next morning, she found that the said vehicle was missing. Accordingly, a complaint under Section 379 of the IPC was made. The investigation was carried out and as per the prosecution case, on 06.10.2015, a secret information was received on the basis of which '*nakabandi*' was formed and the petitioners were apprehended alongwith stolen Auto-Rickshaw. The vehicle in question was taken into custody by the police and the petitioners were interrogated and they suffered their disclosure statements admitting their involvement in the crime and also got the place of occurrence demarcated in pursuance of their disclosure statements. After completion of the investigation, the challan was filed and the charges were framed.

In order to prove its case, the prosecution had examined PW1-complainant-Balkish who had deposed as per her complaint, PW2-Head Constable Rajender who apart from producing on record the site plan Ex.PW2/D and other documents, had also proved the factum with respect to the recovery and the recovery memo Ex.PW2/F. The disclosure statements of both the petitioners were also produced as Ex.PW2/H and Ex.PW2/I and PW3-Head Constable Jitender, also deposed about the fact that PW2 had received a secret information and also supported the prosecution version.

The Chief Judicial Magistrate, Panipat after considering all the

relevant factors, the evidence and the documents on record, convicted the petitioners under Section 379 of the IPC and they were sentenced to undergo rigorous imprisonment for a period of 2 years each. Although, the Sessions Judge, Panipat, after reappraisal of the entire evidence and the documents, upheld the conviction of the petitioners under Section 379 of the IPC, however, their sentence was reduced from 2 years rigorous imprisonment to 6 months rigorous imprisonment.

During the course of arguments, learned counsel for the petitioners, has submitted that he is not challenging the conviction of the petitioners under Section 379 of the IPC but is praying towards leniency and as far as the sentence which has been awarded to the petitioners is concerned, it has been submitted by learned counsel for the petitioners that the petitioners are young men of 24 years and 30 years respectively and have never been involved in any other case and have already faced protracted litigation for the last six years and have never misused the concession of suspension of sentence/bail. It is also submitted that the petitioners are the only bread earners of their respective families and are very poor.

Notice in the main petition.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has placed on record custody certificates of both the petitioners, as per which petitioner No.1-Taslim has already undergone 1 month and 29 days of actual custody out of the total sentence of 6 months rigorous imprisonment and is not involved in any other case and petitioner No.2-Salim has undergone actual custody of 2

months and 2 days out of total sentence of 6 months rigorous imprisonment and is also not involved in any other case.

Learned counsel for the State has further submitted that both the judgments have been passed after taking into consideration the relevant evidence and documents and have rightly convicted the petitioners under Section 379 of the IPC. It is further submitted that the petitioners do not deserve any leniency. However, learned counsel for the State is not in a position to deny the facts as stated with respect to the aspect of leniency.

This Court has heard the learned counsel for the parties and with their able assistance gone through the paper book.

Both the Courts below, after considering the entire material on record, have concurrently found that the petitioners are guilty of having committed the offence under Section 379 of the IPC. The complainant had been examined as PW1 who had reiterated her version as given in the FIR to the effect that she had parked her Auto-Rickshaw outside her house on 02.10.2015 at about 08:30 pm and in the morning, the same was missing. PW2-Head Constable Rajender as well as PW3-Head Constable Jitender have deposed about the fact that the secret information had been received on 06.10.2015 and after having formed a '*nakabandi*', the petitioners were apprehended alongwith the three wheeler in question and regarding the same, recovery memo was prepared which is Ex.PW2/F. The recovery of the vehicle from the petitioners and that too within three days of the filing of the complaint, clearly proves the involvement of the petitioners. The disclosure statements of both the petitioners were also recorded and the same were exhibited as Ex.PW2/H and Ex.PW2/I and on the basis of the said

disclosure statements, the place of occurrence was demarcated. Nothing has come out in the cross-examination of the said witnesses so as to cause a dent in the case of prosecution, thus, this Court upholds the conviction of the petitioners under Section 379 of the IPC.

With respect to the sentence part, it will be relevant to note that the petitioners have never been involved in any other case. Both the petitioners are stated to be poor persons and are sole bread earners in their respective families. They have never misused their concession of bail/suspension of sentence for all these years and have also faced the agony of trial/bail/revision for the last more than 6 years. As per the custody certificates which have been produced on record, petitioner Nos.1 and 2 have undergone period of actual custody of 1 month and 29 days & 2 months and 2 days respectively, out of entire sentence of 6 months rigorous imprisonment.

In similar circumstances, the Coordinate Bench of this Court in case *Sukhdev Singh @ Sukha Vs. State of Punjab* reported as *2019(4) RCR (Criminal) 643* has also reduced the sentence to the period already undergone.

Keeping in view the abovesaid facts and circumstances, the ends of justice would be suitably met, if the substantive sentence imposed on the petitioners, is reduced to one already undergone by them, subject to the petitioners paying a fine of Rs.10,000/- each which would be paid as compensation to the complainant-Balkish.

Learned counsel for the petitioners has undertaken that the petitioners will deposit the said fine before the concerned trial Court within

a period of two months from today failing which the present Criminal Revision Petition would stand automatically dismissed without any reference to the Bench.

Learned trial Court is directed to issue notice to the complainant so that the said amount of Rs.20,000/- is paid to the complainant.

Accordingly, the present Criminal Revision petition is disposed of in the abovesaid terms.

Since, the main case has been decided, application bearing CRM-31709-2021 for suspension of sentence of applicants-petitioners is rendered infructuous and is disposed of as such.

27.09.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No