

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-1199-2022(O&M)

Date of Decision:-16.09.2022

Nain Sukh.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Vikas Choudhary, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J.

The petitioner has preferred the revision petition against the concurrent findings returned by the courts below whereby he was convicted by the court of Judicial Magistrate Ist Class, Gurugram vide judgment and order of sentence dated 12.04.2017 which was upheld by Additional Sessions Judge, Gurugram vide its judgment dated 26.04.2022 dismissing the appeal preferred by the petitioner against the aforesaid judgment of conviction and order of sentence.

2. The brief facts of the cases are that the FIR in this case was lodged on the basis of the statement of Aashif, complainant who was in the general compartment of the Bhuj Bareilly Express on 8-4-2015 at 2.00 PM at Gurugram Railway Station and he raised an alarm about the theft of Rs.

44000/- from his pocket. On his raising an alarm, two police officials ASI

Bhim Singh and HC Rammehar chased the culprit and caught him. He told his name as Nainsukh. On his search, Rs. 44000/- (28000 consist of Rs. 1000/- notes and Rs. 16000/- consists of Rs. 500/- notes) was recovered from his possession. Photocopy of ID of the complainant was also recovered. The Police took the stolen articles in its possession. The accused was arrested. After completion of investigation, the police filed a final report under section 173 Cr.P.C. for trial of the accused.

3. A Copy of challan was supplied to the accused free of cost in view of Section 207 IPC.

4. The accused was charge sheeted for the commission of an offence punishable under Section 379 IPC vide order dated 26.05.2015.

5. The prosecution in order to prove the guilt of the accused examined the following witnesses:-

PW1 ASI Bhim Singh

PW 2 HC Rammehar

PW 3 Aashif

PW 4 ESI Parmanand

The Following documents were exhibited on record:-

Ex. PW 3/A -Statement of complainant Ashif

Ex. P1 - Endorsement of ASI Bhim Singh

Ex. P2 - Recovery Memo of currency notes of Rs. 44,000/- and photocopy ID of complainant

Ex. D3 - Site plan of place of recovery

Ex. P4 - Rail Ticket

Ex. P5 - Recovery memo of rail ticket

Ex. P6 - Fard Jama talashi

Ex. P7 - Arrest Memo

Ex. PW 4/A - Copy of FIR

Ex. PW 4/B - FIR endorsement

Ex. PX1 to Ex. PX19 - Photocopy of currency notes. Original released to complainant on superdari.

The prosecution evidence was closed on 30.03.2017 by the Id. APP for the state.

6. After closing of the prosecution evidence the accused was examined under Section 313 Cr.P.C. in which all the incriminating evidence against him was put to him and he claimed false implication.

7. While PW-1 and PW-2, ASI Bhim Singh and HC Ram Mehar Singh respectively supported the case of the prosecution, PW-3 Aashif, complainant did not support the prosecution version and was declared hostile.

However, based on the evidence of the official witnesses namely, PW-1 ASI Bhim Singh and PW-2 RamMehar and PW-4 ESI Parmanand the petitioner came to be convicted and sentenced as under:-

Under Section	Sentence	Fine	In Default
379 IPC	One Year Rigorous Imprisonment	Fine of Rs.4000/-	In default the convict will further undergo simple imprisonment for 15 days

Pursuant thereto an appeal was preferred before the Court of ADJ, Gurugram and the same came to be dismissed. Hence the present revision has been filed before this Court challenging the judgments of conviction recorded by the courts below.

8. The Counsel for the petitioner contends that the PW-3 Aashif-complainant had failed to identify the petitioner-accused in the witness box and, therefore, the petitioner ought to be acquitted. He contends that the evidence of the official witnesses was not sufficient to affix guilt on the accused. He contends that there are material contradictions in the

statements of the official witnesses and the courts below had failed to take note of the same. The case property was never produced by the prosecution before the trial Court and no independent witnesses were joined despite the fact that a number of people were available at the railway station. He thus contends that the petitioner be acquitted of the charges framed against him.

9. The Counsel for the respondent-State of Haryana on the other contends that undoubtedly the complainant has turned hostile but the deposition of the two official witnesses who had chased the accused and got recovered an amount of Rs.44,000/- cannot be discarded. In fact they have categorically proved that on 08.04.2015 after committing theft of Rs.44,000/- from the complainant, the accused-petitioner was arrested along with the stolen amount. The recovery memo Ex.P-2 has the admitted signatures of PW-3 Aashif. The complainant PW-3 Aashif has also proved his signatures on the recovery memo of rail ticket Ex.P-5, *Jamabandi* Ex.P-6 and arrest memo Ex.P-7. These documents were duly proved in the testimony of PW-1 ASI Bhim Singh , PW-2 HC Ram Mehar and PW-3 Aashif. Therefore, non identification of the accused/petitioner in the court would not be a ground to acquit him.

10. I have heard learned Counsel for the parties at length.

11. Admittedly, in the present case the FIR came to be registered at the instance of complainant PW-3 Aashif who has not supported the case of the prosecution. However, the two official witnesses who had chased and caught hold of the petitioner-accused, namely, ASI Bhim Singh PW-1 and HC Ram Mehar PW-2 have duly supported the case of the prosecution. In fact they were both present at the railway platform at the time of occurrence. They had heard the alarm raised by the complainant-Aashif and

had caught hold of the petitioner-accused. Despite having turned hostile, in his cross examination the complainant has admitted his signatures on the complaint Ex.PW-3/A which he had given to the police. He has also admitted his signatures on the recovery memo Ex.P-2 as also on the documents Ex.P-5 to P-7 respectively vide which the rail ticket of the complainant was taken into possession, the *jamatalashi* of the accused was done and arrest memo was prepared. The complainant also admitted that he had taken the currency notes on superdari.

12. Even otherwise there are no material contradictions amongst the testimonies of the official witnesses so as to discard their version. There is also no evidence of any bias of the police officials towards the petitioner-accused. Therefore, the evidence of PW-1 and PW-2 along with admissions made by the complainant PW-3 Aashif only lead to one conclusion and that is that the petitioner had committed the offence in question for which he has rightly been convicted.

13. In view of the above, I find no merit in the present petition and the same is hereby dismissed. However, keeping in view the fact that the occurrence is of the year 2015, I deem it appropriate to reduce the sentence of the petitioner from rigorous imprisonment of one year to a period of 06 months. He be released immediately on completion of his reduced sentence of 06 months, if not required in any other case.

(JASJIT SINGH BEDI)
JUDGE

September 16, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No