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

CRR-2002-2012

Date of Decision: 11.04.2023

SUNNY

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. Ram Kumar Singla, D.A.G., Haryana.

HARSH BUNGER, J.

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 24.02.2012 and 29.02.2012, respectively passed by the learned Judicial Magistrate Ist Class, Gurgaon, whereby, the petitioner has been convicted under Sections 454 and 379 read with Section 511 of the Indian Penal Code, in case FIR No.143 dated 29.10.2011, registered under Sections 457 and 380 read with Section 511 of the Indian Penal Code (for short 'IPC') at Police Station Sector 55-56, Gurgaon. Challenge is also to the judgment dated 28.05.2012 passed by the Sessions Judge, Gurgaon vide which the appeal filed by the present petitioner was dismissed and the sentence imposed upon him was upheld.

Succinctly, the facts of the case are that on 29.10.2011 at around 7:00 p.m., when complainant Tejvir Singh Tomar was present at his

House No.P-912, Jalvayu Tower, Sector 56, Gurgaonm, he heard a noise of somebody climbing on the terrace of his flat. Upon hearing a noise, he saw that one person had climbed up the pipes installed at the back of his flat and from there, had entered his flat with an intention to commit theft. He immediately nabbed said person, who upon asking of the complainant, disclosed his name as Sunny (present petitioner) son of Sube Singh. The complainant along with another resident namely, Vivek Sondhi of the same locality, handed over said Sunny (present petitioner) to the police. On the basis of the complaint, FIR was registered and during investigation, statements of witnesses were recorded and the petitioner was arrested.

Upon finding a *prima facie* case, the trial Court framed charges against accused under Sections 454 and 379 read with Section 511 of the IPC, to which he pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution examined HC Tirlok Chand (Investigating Officer) as PW1, SI Jagdish Chand (Investigating Officer) as PW2, Constable Vijay Pal (recovery witness) as PW3 and Tejvir Singh Tomar (complainant) as PW4.

Statement of the accused was recorded under Section 313 Cr.P.C., to which he pleaded innocence and false implication. In defence, no evidence was produced.

Vide judgment dated 24.02.2012/29.02.2012, the learned Judicial Magistrate 1st Class, Gurgaon convicted and sentenced the petitioner for offences under Sections 454, 379 read with Section 511 of the IPC.

The learned Sessions Judge, Gurgaon vide his judgment dated 28.05.2012 dismissed the appeal filed against judgment of conviction and order of sentence dated 24.02.2012/29.02.2012 passed by the Judicial

Magistrate Ist Class, Gurgaon, by the present petitioner and the sentence imposed upon him was upheld.

Accordingly, the petitioner filed the present revision petition before this Court.

At the very outset, learned counsel for the petitioner, on instructions, stated that he does not propose to challenge the impugned judgment and order on its merits. He, however, prayed for modification of the order of sentence for the period already undergone by the petitioner.

In this regard, it has been submitted that the FIR for the occurrence was lodged on 29.10.2011 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that the petitioner is a poor young boy and has no previous criminal background. It is also submitted that the petitioner is about 32 years of age and is the sole bread winner of his family, having two minor brothers and one sister to look after, apart from his widow mother. It is further submitted that as per the custody certificate dated 08.02.2023 (which has already been taken on record vide order dated 09.02.2023), the petitioner has already undergone total sentence (excluding parole) of 09 months and 07 days. It is stated that the petitioner is not involved in any other case.

On the other hand, learned counsel for the respondent-State of Haryana, has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, learned counsel for respondent-State of Haryana, has not disputed the fact with respect to the custody of the petitioner.

I have heard learned counsel for the parties and perused the entire material available on record, as well as judgment of the trial Court and lower Appellate Court.

It is well settled that scope of revisional jurisdiction of this Court is quite limited and the Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment under challenge.

Perusal of the judgments passed by the learned Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 454 and Section 379 read with Section 511 IPC and the Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioner has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioner is upheld.

As regards quantum of sentence, it is noticed that vide order dated 29.02.2012 passed by the learned Judicial Magistrate 1st Class, Gurgaon, the petitioner has been sentenced as under:-

<i>Sr. No.</i>	<i>Offence under Section</i>	<i>Punishment</i>
1	454 of the Indian Penal Code	To undergo rigorous imprisonment for a period of three years and fine of Rs.1,000/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of four months.
2	379 read with Section 511 of the Indian Penal Code	To undergo rigorous imprisonment for a period of 18 months and fine of Rs.1,000/-. In default of payment of fine, the convict shall undergo simple imprisonment for a period of four months.

It was ordered that both the substantive sentences of imprisonment shall run concurrently.

Before considering the submissions of the counsel for the petitioner on the issue of quantum of sentence, it is apposite to refer to judgment of Hon'ble the Apex Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, explaining rehabilitary and reformatory aspects in sentencing, whereby, it has been observed as under :-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

In ***Shyam Narain vs State (NCT of Delhi), 2013(7) SCC 77***, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose

of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen.

In *Kokaiyabai Yadav vs State of Chhattisgarh 2017(13) SCC 449*, it has been observed that reforming criminals who understand their wrong doing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world, have the capacity of humanising the world.

Considering the totality of circumstances, since the FIR in question was lodged on 29.10.2011; the petitioner has suffered the agony of trial/appeal/revision for more than 11 years; the petitioner is the sole bread winner of his family and further as per the custody certificate dated 08.02.2023, he has already undergone total sentence (including remission) of 09 months and 07 days and is not involved in any other case and neither anything has been pointed out by the State counsel that the petitioner has misused the concession of bail: accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period of custody already undergone by him in this case.

Accordingly, the present revision petition is partly allowed. The conviction of the petitioner is upheld. However, the order of sentence dated 29.02.2012 passed by the learned Judicial Magistrate 1st Class, Gurgaon, as upheld by the learned Sessions Judge, Gurgaon vide judgment dated

28.05.2012 is modified to the extent that the sentence of three years rigorous imprisonment awarded to the petitioner is reduced to the period of custody already undergone by him in this case: however, keeping the amount of fine imposed as untouched.

Since, the fine of Rs.2,000/- imposed upon the petitioner is stated to be already paid vide receipt No.20847 dated 29.02.2012 (as has also been recorded in judgment dated 29.02.2012, passed by learned Judicial Magistrate Ist Class, Gurgaon) and his sentence having been suspended vide order dated 30.08.2012 passed by this Court during the pendency of this revision petition, the petitioner is now not required to surrender.

This petition is disposed of in abovesaid terms.

Pending miscellaneous application/s, if any, shall also stands disposed of, in view of the abovesaid order.

April 11th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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