

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

246

CRR-1319-2021

Date of Decision:21.11.2023

Washid

...Petitioner

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Rahul Jaswal, Advocate, for the petitioner.
Ms. Sheenu Sura, DAG, Haryana.

N.S.Shekhawat J.

1. The petitioner had filed present revision petition against the judgement dated 02.09.2021 passed by the Additional Sessions Judge, Panipat and the impugned judgment dated 19.10.2023 and order of sentence dated 23.10.2023 passed by the Judicial Magistrate 1st Class, Panipat, whereby, the petitioner was ordered to be convicted for the offence punishable under Section 411 of IPC and was sentenced to undergo rigorous imprisonment for a two years.

2. At the very outset, learned counsel for the petitioner contends that he does not wish to challenge the judgement of conviction and a lenient view may be taken while awarding the sentence to the present petitioner in the present case. Even though, the petitioner has chosen not to challenge the impugned judgment of conviction, still, this Court has examined the evidence led by the prosecution in the present case, in the light of the settled canons of law.

3. As per the case of the prosecution on 05.11.2014, motorcycle bearing registration No. HR-06Y-8590 make Hero CD-Deluxe of Ram Kumar Saini, complainant was stolen between 1.00 p.m. to 1.15 p.m., from outside his factory where he had parked the motorcycle. Initially, the FIR was registered under Section 379 IPC. However, during the course of investigation, the police had arrested the present petitioner and the motorcycle was recovered from him on 15.12.2014. After completion of the investigation, the challan under Section 173 Cr.P.C. was presented in the Court of the Area Magistrate.

4. The petitioner was ordered to be charge sheeted for the commission of the offence punishable under Section 411 IPC and pleaded his innocence and claimed trial.

5. In order to prove the case, the prosecution had examined 04 witnesses, namely, SI Surat Singh (Retired), Ram Kumar Saini as PW2, Head Constable Naresh Kumar as PW3 and HC Santosh as PW4 and after examination of all the 04 witnesses, the evidence was ordered to be closed. The petitioner pleaded his false implication in his statement under Section 313 Cr.P.C., and denied all the allegations levelled against him. However, the petitioner/accused opted not to lead any evidence in his defence.

6. In the present case, the prosecution had initially examined PW1 Surat Singh SI (Retired), who was the Investigating Officer of the case. He had registered FIR Ex.PW1/A and had made endorsement Ex.PW1/B. The complainant was examined as PW2,

who reiterated the allegations levelled by him in the present FIR. HC Naresh Kumar, second Investigating Officer was examined as PW3, who arrested the petitioner and took into possession the motorcycle vide memo Ex.PW3/A. He recorded the disclosure statement of the accused and site plan of the recovery. The statement of PW3 was corroborated by PW4 HC Suresh Kumar, who had associated him in the course of investigation.

7. I have gone through the prosecution evidence as well as pleas raised by the petitioner before the Courts below. In the present case, the petitioner was apprehended with the motorcycle of the complainant and the petitioner could not offer any explanation for keeping the motorcycle of the complainant, which was already stolen and a criminal case already stood registered against unknown person in this regard. Even, both the Courts below have recorded detailed findings, while convicting the present petitioner and this Court finds no reason to deviate from the said findings. All the submissions made by the learned counsel for the petitioner have been dealt with, by keeping in view the settled principles of law and this Court found no illegality or material irregularity in the impugned judgment. Thus, the impugned judgment passed by the Courts are ordered to be upheld.

8. Now reverting the order of sentence dated 23.10.2023, the petitioner was directed to undergo rigorous imprisonment for a period of two years passed by the Judicial Magistrate 1st Class, which was ordered to be upheld by the appellate Court. During the course of hearing, the learned State counsel has placed on record the custody

certificate and as per the said custody certificate, the petitioner has already undergone 09 months and 02 days of sentence (including remissions) out of the total sentence of two years. Even though, one more case was registered against the present petitioner, however, the petitioner was ordered to be acquitted in the said case on 07.08.2018. Thus, it is apparent from the custody certificate that the petitioner was not facing any other criminal prosecution, apart from the present case. Learned counsel for the petitioner contends that the petitioner is a young person and is the sole bread earner of his family, consisting of his two minor children and old ailing parents. He submits that after the present case, the petitioner remained on bail also and in the last more than 08 years, he was not involved in any other criminal activity and may be given a chance to reform himself. Consequently, the sentence imposed on the present petitioner is ordered to be reduced to the period already undergone by him. However, the petitioner is directed to pay a fine of Rs. 50,000/-, which shall be deposited by the petitioner in the Punjab and Haryana High Court Bar Clerks' Association within a period of three months from today, failing which, the petitioner shall undergo rigorous imprisonment as awarded by the Court below.

9. With the above modifications, the appeal is partly allowed.

10. All pending applications, if any, are disposed off, accordingly.

11. The case property, if any, may be dealt with as per the

rules after expiry of period of limitation for filing the appeal.

12. Records of the Court below be sent back.

21.11.2023

amit rana

(N.S.SHEKHAWAT)
JUDGE

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