

SHARWAN ALIAS MUNSHI

...Applicant-appellant

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Krishan Singh, Advocate
for the appellant

Mr. Vikas Bhardwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction dated 04.01.2024 and order of sentence dated 05.01.2024 passed by learned Sessions Judge, Yamuna Nagar vide which the appellant was convicted in the case stemming from FIR bearing no. 199 dated 17.03.2023, under Sections 379-A, 34 of the IPC, registered at Police Station City Yamuna Nagar, Yamuna Nagar. The appellant was sentenced vide order dated 05.01.2024 as under: -

Offence	Sentence
Section 411 IPC	Rigorous imprisonment for 6 months and a fine of Rs. 1000/-, in default of which rigorous imprisonment of 15 days.

FACTUAL BACKGROUND

2. The facts, in brief, are that, on 16.03.2023, the complainant was on his way back to home from work, when two unknown persons on a motorcycle came from behind and snatched his phone from his hand and fled away. The case was accordingly registered and the investigation was

commenced. On 21.04.2023, the accused/appellant was arrested and the snatched mobile phone along with the motorcycle which was used in the commission of the crime was recovered from his possession.

3. On completion of the investigation and presentation of challan vide order dated 28.08.2023, the appellant along with the co-accused were charged under Section 379-A read with Section 34 of the IPC, to which they pleaded not guilty and claimed trial.

4. The prosecution examined as many as 5 witnesses to prove its case. Statements of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein they pleaded false implication, however, no evidence was led by them in their defence.

5. After taking into account all the material on record, the appellant was convicted by the learned trial Court vide judgment dated 04.01.2024 and the order of quantum of sentence was passed on 05.01.2024.

CONTENTIONS

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 04.01.2024 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the appellant as he has already undergone a period of 4 months and 07 days in custody out of the total sentence of 6 months. Furthermore, no other case is pending against him.

6. Learned counsel for the appellant further submits that the appellant has reformed and intends to live his life as a law-abiding citizen.

7. Per contra, learned State counsel opposes the prayer of the appellant as the learned trial Court has passed a well-reasoned judgment based

on correct appreciation of evidence available on record, and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

9. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the

quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

10. As per the custody certificate produced by the learned State counsel, details of custody period of the appellant are tabulated as under: -

Sr No.	Particulars	Period	Duration
1.	Custody under trial	22/04/2023 to 22/06/2023 and 04/01/2024 to 04/01/2024	2 months 02 days
2.	Custody after conviction	05/01/2024 to 09/02/2024	1 month 05 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	05/01/2024 to 09/02/2024	1 month 05 days
5.	Actual undergone period		3 months 07 days
6.	Earned remission		1 month
7.	Total sentence including remission		4 months 07 days

11. A perusal of the judgment of conviction passed by the trial Court indicates no perversity in its findings and the same are based on correct appreciation of evidence available on record. Counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

12. The FIR in the present case was lodged on 17.03.2023 and the case was instituted in the trial Court on 19.06.2023. Since his conviction in the present case, the appellant has grown into a law-abiding citizen and desires to

live a peaceful life. This is evident from the fact that as per his custody certificate, there are no other criminal cases pending against him. Out of the total sentence of 6 months under Section 411 IPC, the appellant has undergone actual sentence of 04 months and 07 days. Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence awarded to the appellant is reduced to the period already undergone by him.

16. Consequently, the present appeal is disposed of in the following terms: -

- i The judgment dated 04.01.2024 passed by the learned Sessions Judge, Yamuna Nagar, convicting the appellant, is upheld, however, the order of sentence dated 05.01.2024 is modified to the extent that the sentence of rigorous imprisonment for 6 months under Section 411, IPC awarded to the appellant is reduced to the period of sentence already undergone by him.
- ii The sentence of fine of an amount of Rs. 1000/- imposed upon the appellant by the trial Court is increased to Rs.10,000/-. The appellant is directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

17. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.02.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No