



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 14.03.2024

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CRL.REV.P. 336/2024 and CRL.M.(BAIL) 415/2024

SHAHID

..... Petitioner

Through: Ms. Mumtaz Ahmad and Mr. Satish
Sharma, Advocates

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Laksh Khanna, APP for State
with SI Sachin Kumar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present revision petition filed under Section 397 read with Section 482 Cr.P.C., has been preferred against the judgment dated 29.01.2024 passed by the learned ASJ (FTC)-03, South East District, Saket Courts in Criminal Appeal No. 65/2019 whereby petitioner's conviction for the offence punishable under Section 379/34 IPC was upheld.
2. The impugned judgment came to be passed by the Appellate Court in the context of judgment of conviction dated 17.12.2018 and order on sentence dated 08.01.2019 passed by learned M.M. in the case arising out of FIR No.604/2009 registered under Sections 379/382/34 IPC at P.S. Amar Colony, whereby he was held guilty for the offence punishable under the aforesaid sections and sentenced to undergo simple imprisonment for 2 years.
3. Brief facts, as noted by the Appellate Court, are as follows :-



“2. Briefly stated, the case of the prosecution was that on 04.12.2009 at about 7.30 p.m. in the bus route no. 429 near C Block, East of Kailash, New Delhi within the jurisdiction of PS Amar Colony, accused Shahid and Shahnawaz @ Sonu @ Fazruddin in furtherance of their common intention committed theft of mobile phone make Sony Ericsson of complainant Santosh Kumar after having made preparation for causing hurt or restraint or fear of hurt or fear of restrain in order to commit theft and thereby committed offence punishable u/s. 382/34 IPC.

3. On the said complaint, FIR no. 604/2009, PS Amar Colony under section 379/382/34 IPC was registered. Chargesheet was filed against both the accused persons. During the trial eleven witnesses were examined by the prosecution and after hearing final arguments, both the accused persons were convicted for the offence under Section 379/34 IPC and punished for the same. Aggrieved by said judgment, the present appeal has been filed on behalf of convict Shahid.”

4. In support of its case, prosecution examined a total of 11 witnesses. The victim was examined as PW1, who, however, turned hostile and did not support the prosecution case, except for the fact that on the date of the incident, his mobile phone was stolen by someone. He also did not identify either of the accused persons. The complainant was examined as PW2, who deposed that on the date of the incident, while he was accompanying PW1 in the bus, 3/4 boys boarded the bus and one of them took out his mobile phone. He felt something in his pocket and caught hold of that person. The said person, however, passed on the mobile phone to another boy, who got down from the bus. He identified the petitioner as the person who had taken out the mobile phone from his pocket. The petitioner was subsequently handed over and arrested by the police, who had reached the spot after about 15 minutes. The prosecution also examined PW4, who turned hostile and denied having purchased a mobile phone make Sony Ericsson from the



accused persons.

On conclusion of trial, the Trial Court observed that both PW1 and PW2 were travelling together and that their mobile phone were pick pocketed on the same day. While PW1 had turned hostile and did not identify the accused, PW2 corroborated the allegations of theft of mobile phone and also identified the petitioner as the one who had pick pocketed his phone. Further, the petitioner was caught at the spot. As per the prosecution case, the mobile phone was handed over by the petitioner to co-accused namely *Shahnawaz @ Sonu @ Fazruddin* who had fled from the spot. The only contention raised that no recovery of mobile phone was affected was rejected as the petitioner had been caught at the spot. The Appellate Court also concurred with the finding of the Trial Court. Even during the present proceedings, learned counsel for the petitioner contended that he is not challenging the conviction on merit and prays that petitioner be released on the period already undergone by him.

5. The offence relates to the year 2009. Nominal roll of the petitioner has been placed on record as per which, as on 13.03.2024, the petitioner has undergone incarceration of 3 months and 11 days with remission of 3 days. The petitioner's jail conduct is stated to be satisfactory and he is also not found involved in any other case.

6. Considering the aforesaid and the fact that the case relates to pick pocketing of mobile phone, while his conviction under Sections 379/34 IPC is upheld, his sentence is however modified to the period already undergone by him, subject to payment of fine of Rs.7,000/- before the Trial Court, failing which the petitioner shall undergo simple imprisonment for 2 months. Bail bond of the petitioner, if any, is cancelled and surety stands



discharged.

7. Copy of the judgment be communicated to the Trial Court as well as concerned Jail Superintendent.
8. Petition is disposed of in the above terms alongwith miscellaneous application.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 14, 2024

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