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

+ CRL.REV.P. 267/2017

MOHD AZAD

.....Petitioner

Through: Mr. M.K. Pervez,
Advocate.

versus

THE STATE

.....Respondent

Through: Mr. Manoj Pant, APP for
the State.
SI Sandeep (P.S. Malviya
Nagar).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

24.12.2024

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1. The present revision petition is filed challenging the judgment dated 20.03.2017 (hereafter '**impugned judgment**'), passed by the learned Appellate Court, in Criminal Appeal 8107/2016, whereby the challenge by the petitioner to the judgment on conviction dated 25.07.2015 and order on sentence dated 30.07.2015, passed by the learned Chief Metropolitan Magistrate, South District, Saket Court, Delhi, in FIR No. 318/2001, registered at Police Station Malviya Nagar was rejected.

2. The petitioner, by judgment on conviction dated 25.07.2015, was convicted for the offences under Section 411 of the Indian Penal Code, 1860 ('**IPC**') and Section 120 B read with Section 379 of the IPC. The co-accused Abdul was convicted for



the offence under Section 120B read with Section 379 of the IPC.

3. By the order on sentence dated 30.07.2015, the learned Trial Court had sentenced the accused persons to undergo rigorous imprisonment for a period of one year and three months and to pay a fine of ₹5,000/- each for the offence under Section 120B read with Section 379 of the IPC, and in default of payment of fine, to further undergo simple imprisonment for a period of one month respectively. The petitioner was also sentenced to undergo rigorous imprisonment for a period of one year and three months and to pay a fine of ₹5,000/- for the offence under Section 411 of the IPC, and in default of payment of fine, to further undergo simple imprisonment for a period of one month. The sentences were directed to run concurrently.

4. The learned Appellate Court, by the impugned judgment, upheld the conviction of the petitioner. However, the sentence of the petitioner was modified as follows:

“Thus, the appellant/accused Mohd. Azad is convicted for the offence u/s. 411 of the IPC with rigorous imprisonment for a period of 10 months and with a fine of Rs. 15,000/- in default of which he shall undergo simple imprisonment for a period of one month . He is also sentenced to rigorous imprisonment for 10 months u/s. 120B read with Section 379 of the IPC with fine of Rs. 15,000/- in default of which he shall undergo simple imprisonment for one month.”

5. The fine amount was paid by the petitioner. An affidavit has been filed by the petitioner to this effect as well.

6. This Court, by order dated 26.05.2017, had suspended the sentence of the petitioner till the pendency of the present petition.

7. The brief facts of the case are that the accused persons, including the petitioner, had stolen the car of the complainant. The stolen vehicle was traced on the basis of secret information and the accused persons were arrested in the present case.

8. The learned counsel for the petitioner, at the outset,
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submits that the petitioner was convicted after more than a decade in the year 2015 and another eight years have elapsed since the dismissal of the appeal as well. He submits that the petitioner has already undergone a fair portion of the sentence in custody and he has instructions to confine his arguments to the question of sentence.

9. He submits that the offences for which the petitioner has been convicted do not prescribe any minimum sentence.

10. He submits that the petitioner belongs to the poor strata of the society and he is the sole bread earner in his family, which includes his wife and three children.

11. He submits that the petitioner has stayed in custody for a substantial period of the sentence and subjecting him to imprisonment to serve the awarded sentence would disrupt his life.

12. He submits that a lenient view may be taken by considering the fact that the petitioner has already undergone around six months in custody.

13. The learned Additional Public Prosecutor for the State submits that the State has no objection if the sentence of the petitioner is commuted to the period already undergone.

14. I have heard the counsel and perused the record.

15. The Hon'ble Apex Court, in the case of **Ramdas v. State of Madhya Pradesh : (2009) 4 SCC 57**, in a case involving conviction for the offence under Section 324 of the IPC, had commuted the sentence of 3 years to the period already undergone, that is, fifteen months, by factoring in that the appellant therein had been prosecuting the matter before various Courts for over fourteen years.

16. In the case of **B.G. Goswami v. Delhi Admn. : (1974) 3**



SCC 85, the Hon'ble Appellate Court had observed that the reformatory aspect of sentence is given primacy in modern society and reduced the sentence to the period already undergone by the appellant therein. It was observed that sending the appellant to jail after seven years of pursuing the proceedings would cause him to lose his job and undue hardship to his family members. The relevant portion of the judgment is reproduced hereunder:

*“10... Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. **The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society.** Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. **In modern civilized societies, however, reformatory aspect is being given somewhat greater importance.** Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal. **In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs 200 to Rs 400. Period of imprisonment in case of default will remain the same.**”*

(emphasis supplied)

17. In the present case as well, it is relevant to note that the incident dates back to the year 2001. The petitioner was convicted by the learned Trial Court after more than 14 years in



the year 2015. Thereafter, the appeal preferred by the petitioner was dismissed in the year 2017 and the petitioner has been pursuing the present matter since then.

18. The nominal roll indicates that the jail conduct of the petitioner was satisfactory. It is also relevant to note that the petitioner has not misused the liberty of bail granted to him.

19. While the previous involvement report indicates that the petitioner was involved in three other cases of similar nature, however, the involvements date back to the years 1999 and 2001. It appears that the petitioner has since then assimilated in the society and not indulged in other criminal activities.

20. Considering the aforesaid discussion, in the opinion of this Court, interests of justice would be met if the sentence imposed upon the petitioner is reduced to the period already undergone by him.

21. In view of the above, without interfering in the conviction of the petitioner, the sentence of ten months is reduced to the period already undergone by the petitioner.

22. The present petition is disposed of in the aforesaid terms.

23. The bail bond and surety furnished by the petitioner shall stand discharged.

AMIT MAHAJAN, J

DECEMBER 24, 2024