

(2006) 07 DEL CK 0038

Delhi High Court

Case No: Criminal Rev. No. 354 of 2006

Arif

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 4, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 380, 411, 443, 445, 453

Citation: (2006) CriminalCC 291 : (2006) 4 RCR(Criminal) 856**Hon'ble Judges:** Badar Durrez Ahmed, J**Bench:** Single Bench**Advocate:** Sunil Bhatt, for the Appellant; Richa Kapur, for the Respondent

Judgement

Badar Durrez Ahmed, J.

The petitioner has filed this Revision Petition against the judgment and order passed by the learned Additional Sessions Judge on 18.4.2006 partly allowing the appeal filed by the petitioner and partly upholding the order of conviction passed by the Metropolitan Magistrate.

2. The petitioner was tried for the offences u/s 454, 380 read with Section 411 of the Indian Penal Code. After trial, the learned Metropolitan Magistrate convicted the petitioner under Sections 454 and 380 by an order dated 2.9.2004. By virtue of an order dated 9.9.2004 the learned Metropolitan Magistrate sentenced the petitioner to three years rigorous imprisonment for the offence u/s 454 and 2-1/2 years rigorous imprisonment with fine of Rs. 3500/- in respect of the offence u/s 380 IPC. The petitioner, being aggrieved, filed an appeal and the learned Additional Sessions Judge by the impugned order dated 18.4.2006 confirmed the conviction u/s 454 and also upheld the sentence of three years rigorous imprisonment in respect of this offence. However, with regard to the offence u/s 380 IPC, the learned Additional Sessions Judge acquitted the petitioner. Being aggrieved by the conviction u/s 454 IPC, the petitioner has preferred this Revision Petition.

3. The learned counsel for the petitioner submitted straightaway that the petitioner at the time of passing of the judgment and/order dated 2.9.2004 by the learned Metropolitan Magistrate had already been in custody for one year and twenty two days. Thereafter, the petitioner had been on bail during the period of appeal and after the dismissal of the appeal, the petitioner has consequently surrendered and in custody for over a month or so. Essentially, what the learned counsel for the petitioner was submitting was that the petitioner has undergone a sentence of more than one year. His basic grievance with regard to the impugned order was that once the petitioner was acquitted of the offence u/s 380 IPC, he should not have been convicted u/s 454 thereof without the Court coming to a definite finding as to the motive for the lurking house trespass. According to him, therefore, on the basis of the facts found by the Courts below, the offence in any event would fall either u/s 443 or 445 which would be punishable u/s 453 and not u/s 454. The learned counsel for the petitioner submitted that the sentence of three years awarded by the appellate Court as well as the trial Court cannot be sustained and it is on this ground that he is seeking revision.

4. The learned counsel for the State wanted to support the impugned order but she was unable to point out any finding recorded in the impugned judgment which would show that the lurking house trespass or house breaking was done in order to commit any offence punishable with imprisonment. She was unable to do so because the conviction u/s 380 IPC which was made out as per the orders of the learned Metropolitan Magistrate had been set aside and the petitioner had been acquitted under the said provision by the learned Additional Sessions Judge in appeal. There is no finding with regard to any other offence which the petitioner could have been said to have had the intention to commit for the purpose of which he was found to be guilty of lurking house trespass or house breaking.

5. A plain reading of Section 454 IPC would make it clear that lurking house trespass or house breaking itself would not bring it within the four corners of Section 454 unless and until it is established that the lurking house trespass or house breaking was done in order to commit any offence punishable with imprisonment. This ingredient is missing in the present case. Therefore, the petitioner cannot be convicted u/s 454 IPC. However, looking at the findings returned by the Courts below as well as the evidence on record, it is apparent that the petitioner is liable to be convicted under Sections 443 and 445 and, therefore, he would be liable for punishment u/s 453. The maximum term provided under this Section is two years imprisonment. The petitioner has already undergone imprisonment for a period of more than thirteen months.

6. Keeping in view the totality of the circumstances in mind, I feel that the conviction of the petitioner has to be altered as indicated above and he has to be punished not u/s 454 IPC but u/s 453 IPC and I feel that the period undergone is sufficient sentence in this matter. Accordingly, the petitioner is directed to be released

forthwith.

7. This Revision Petition stands disposed of.