

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Criminal Revision No.108 of 2019

Noor Hassan
Vs.
The State and another

Petitioner By: Mr. Najeeb Ullah Khan, Advocate.
State By: Mr. Zohaib Hassan Gondal, State Counsel
along with Akram, Sub-Inspector.

Date of Hearing: 18.02.2020.

GHULAM AZAM QAMBRANI,J.:- Through this Criminal Revision Petition, the petitioner (Noor Hassan) has challenged his conviction and sentence passed by the learned Judicial Magistrate, Section-30 (East), Islamabad, vide order dated 16.09.2019, which reads as follows:-

“ Confessional statement of accused Noor Hassan, has been recorded, which is placed on file. In view of the confessional statement made by the accused, I am of the view that the prosecution has fully proved its case against the accuse. Accused has stated in his confessional statements that, he is poor and sole bread earner of his family. So taking a lenient view he is convicted and sentence

U/s 380 P.P.C,

Imprisonment (R) of (04) years, with fine of Rs.3,000/- in offence, and default of payment of fine the convict shall further undergo 15 days.

U/s 411 P.P.C,

Imprisonment (R) of (03) years, with fine of Rs.2,000/- in offence, and default of payment of fine the convict shall further undergo 10 days.

U/s 454 P.P.C,

Imprisonment (R) of (03) years, with fine of Rs.2,000/- in offence, and default of payment of fine the convict shall further undergo 10 days.

2. The accused is also given the benefit u/s 382-B Cr.P.C Substantive shall run concurrently. Conviction warrants be sent to Superintendent Adyala Jail accordingly.

Case property, if any, be dealt in accordance with law. File be consigned to record room after due completion."

2. Being aggrieved of the above mentioned order, the petitioner preferred an appeal before the learned Additional Sessions Judge-III, (East) Islamabad, which was also dismissed vide judgment dated 05.11.2019 hence the instant Criminal Revision Petition.

3. Briefly stated facts of the prosecution case are that on 24.01.2011, one Abdul Hameed Sheikh lodged F.I.R No.34/2011 with Police Station Shahzad Town, Islamabad, with the averments that he is a resident of District Dadu, Sindh Province. He has taken a house on rent at Chatha Bakhtawar, Islamabad, and for past three years, he is residing there. It has been alleged that on 17.01.2011, at about 08:30am, he left the house for office and when returned at about 07:00p.m, he saw that the locks of the main gate have been broken and found the following household articles missing:-

"4 precious gents wrist watch, 4 ladies wrist watch, 3 movdo watch each amounted Rs.11,000/-total Rs.33,000/-, 2 Rolex wrist watch each amounted to be of Rs.75,000/- Rs. Total 150,000/-. One Tissot worth Rs.16000/- One next watch worth Rs.16000/-, artificial jewelry worth Rs.100,000/-, perfume valued Rs.25,000/-,DVD player and buffer amount Rs.8,000/-, 4 Boksi stitched clothes, one unstitched suit, one electric heater valued Rs.4,000/-.

It has been further alleged that some unknown accused persons after breaking the door have stolen the above-mentioned articles. On 17.11.2011, he came to know through his own sources that one of his friend namely Muhammad Masood along with four others have committed theft in the alleged house and thereafter, he has nominated further four accused persons including the petitioner. After registration of the F.I.R, investigation was carried out by the police; on 13.02.2011, petitioner was arrested and during investigation, DVD Player was allegedly recovered at the pointation of petitioner. After usual investigation challan of the case was

submitted before the learned Court of Judicial Magistrate, Section-30 (East), Islamabad.

4. The learned trial Court after fulfilling the codal formalities on 08.06.2013, framed the charge against the petitioner to which he pleaded not guilty and claimed trial. In order to prove the accusation, the prosecution examined the following witnesses:-

- i. PW- 1, Momin Khan, Head constable, (Recovery witness),
- ii. PW- 2, Muhammad Hanif, Sub-Inspector, (chalked out the F.I.R)
- iii. PW- 3, Muhammad Arshad, constable, (Witness of recovery memo, Ex.P/2)

5. During trial, on 16.09.2019, the petitioner, pleaded guilty to the charge. The learned trial Court served him with a Show Cause Notice on the same day and passed conviction order dated 16.09.2019 and sentenced him as mentioned above in para 01. The petitioner being aggrieved from the order dated 16.09.2019, filed an appeal before the learned Additional Sessions Judge-III, (East) Islamabad, which was dismissed vide order dated 05.11.2019 on the ground that the petitioner has pleaded guilty to the charge and the appeal filed by the petitioner was barred under Section 412 Cr.P.C hence, this revision petition.

6. The learned counsel for the petitioner contended that the petitioner pleaded guilty and kept himself at the mercy of the Court; further submitted that the petitioner is only earning member of his family and lastly prayed for reduction in the sentence awarded to the petitioner by the learned trial Court.

7. Conversely, the learned State counsel strongly opposed the contention of the learned counsel for petitioner contending that the petitioner himself has pleaded guilty to the charge, therefore, the instant petition is not competent hence, may be dismissed.

8. Heard the learned counsel for the petitioner and the learned counsel for the state, peruse the record with their able assistance.

9. Perusal of the record reveals that F.I.R No.34 dated 24.01.2011 has been registered with the Police Station Shahzad Town, Islamabad. The learned trial Court has recorded statements of three prosecution witnesses. In the meanwhile, on 16.09.2019, the petitioner made confessional statement before the learned trial Court, however, the learned trial Court keeping in view the consequences have asked again some questions that *"do you know that you are not bound to make this statement"* and some other relevant questions have been put to the petitioner even then the petitioner has replied that *"I confess my guilt voluntarily"*. The learned trial Court has also served him a show cause notice and then passed the impugned judgment.

10. Keeping in view the confessional statements and evidence recorded by the learned trial Court, it reveals that the prosecution through PW-3 has proved recovery of alleged stolen DVD at the pointation of petitioner from his house which has stood proved that he has committed the alleged offence.

11. The conviction to the petitioner under Section 411 P.P.C was bad in the eyes of law as there is even no allegation of the offence against the petitioner for such offence. The learned trial Court while passing the conviction to the petitioner, has not kept in mind that the petitioner was sentenced for the commission of theft of the same articles and again convicted and sentenced him under Section 411 P.P.C for retaining the same stolen item. That Article-13 of the Constitution of Islamic of Public of Pakistan, 1973, provides that:-

"No person-

a) Shall be prosecuted or punished for the same offence more than once,"

Therefore, the conviction and sentence awarded to the petitioner under Section 411 P.P.C was bad under the law. On the other hand, the petitioner pleading guilty to the charge, made a statement before the Court that he is a poor man and sole earner of

his family, in reply to the show cause has stated that he pleaded guilty and left himself at the mercy of the Court.

12. Admittedly, the petitioner has made clear confession thereby admitting the commission of alleged offence. It is a common practice that once a person involved in a criminal case wants to plead guilty to the charge leveled against him and placed himself at the mercy of Court and in that eventuality he becomes the friend of the Court and the court always takes lenient view in respect of his sentence . Since the petitioner in the instant case has straight away placed himself at the mercy of learned trial Court and pleaded guilty, therefore, the learned trial Court has taken a lenient view in respect of his sentence which is neither illegal nor contrary to the punishment provided for the said offence. In a similar case, reported as "*Muhammad Saeed v. The State*" (1985 SCMR 1405), the Hon'ble Supreme Court of Pakistan has held as under:-

"Not only the petitioner pleaded guilty, he also admitted that the drug recovered from him was substandard and declined to produce any evidence. There is no reason why after the complaint and his appearance in the Drug Court he should remain unaware that he was making a statement in Court in proceedings which may result in his conviction and sentence. This being a case of conviction and sentence on his own plea of guilty, no interference is called for and hence leave to appeal is refused."

13. In view of the above facts and circumstances, learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned order passed by learned Judicial Magistrate, Section-30, East, Islamabad and Judgment dated 05.11.2019, passed by the learned Additional Sessions Judge-III, East, Islamabad, therefore, this petition having no force is dismissed.

 (GHULAM AZAM QAMBRANI)
JUDGE

Announced in open court, on 10 day of March, 2020.

JUDGE

"Rana.M.Ift"