

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 431/2008

Sunil S/o OM Prakash Rao, R/o Bijoliya, District Bhilwara

----Petitioner

Versus

State Of Rajasthan

----Respondent

For Petitioner(s) : Mr. Praveen Singh
Ms. Alisha

For Respondent(s) : Mr S.S. Rathore, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

15/07/2025

1. The petitioner was tried for offences punishable under Sections 457, 380, and 75 of the Indian Penal Code. Vide judgment dated 23.10.2007 passed by the learned CJM, Bhinmal in Criminal Original Case No.677/2006 whereby, he was convicted and sentenced to undergo rigorous imprisonment for a period of seven years for each of the substantive offences, along with a fine of ₹5,00/- under each count, with the direction that in default of payment of fine, he shall further undergo imprisonment as per the default stipulation. The appeal preferred by the petitioner challenging the said conviction and sentence was dismissed vide judgment dated 16.11.2007 passed by the learned Addl. Sessions Judge, Bhinmal in Criminal Appeal No.48/2007.

2. I have heard learned counsel for the parties and has meticulously examined the impugned judgments as well as the material available on record.

3. Upon perusal, it is observed that the conviction of the petitioner under Sections 457 and 380 IPC is founded upon recoveries made vide Exhibit P-3, the disclosures attributed to the petitioner during investigation, and the other circumstantial evidence on record. The concurrent findings of fact recorded by the learned Trial Court and affirmed by the Appellate Court are supported by cogent reasoning and are not perverse so as to warrant interference in the exercise of revisional jurisdiction under Section 397 read with Section 401 of the CrPC. Hence, the findings of guilt under Sections 457 and 380 IPC are affirmed and upheld.

3.1. However, a serious legal infirmity is noticed in the invocation and application of the Section 75 IPC by both the Courts below. It is evident from the record that the Courts invoked Section 75 IPC merely on the basis that five other criminal cases of similar nature were pending against the petitioner. All these cases were registered at the same police station, pertained to the same time frame and were at a nascent stage of trial. Significantly, in none of these cases had the petitioner been convicted.

3.2. It is trite law that Section 75 IPC—which enhances punishment for repeat offenders—can be invoked only where the accused has been previously convicted of an offence punishable under Chapter XII (Offences Relating to Theft) or Chapter XVII (Offences Against Property) of the IPC. Mere pendency of criminal cases, absent a prior conviction, does not satisfy the statutory prerequisite for application of Section 75. Therefore, the

invocation of this provision in the present case is legally untenable and constitutes a manifest error of law.

3.3. Accordingly, this Court is constrained to hold that the application of Section 75 IPC by the learned Trial Court and affirmed by the Appellate Court is unsustainable. To this extent, the impugned orders are hereby quashed and set aside. It is further noted that the petitioner is a poor, illiterate individual belonging to a backward class, residing in a rural area, and lacking a stable source of income. He has already undergone both police and judicial custody and has been subjected to the rigours of criminal litigation since the year 2006, enduring nearly two decades of legal uncertainty. Given these mitigating circumstances, and considering the principles of reformation and rehabilitation in sentencing jurisprudence, this Court is of the view that the period already undergone by the petitioner in custody is sufficient to subserve the ends of justice.

4. In light of the above, the instant Criminal Revision petition is disposed of, while the conviction under Sections 457 and 380 IPC is maintained, the sentence already undergone by the petitioner is hereby treated as adequate punishment. The enhancement of sentence by recourse to Section 75 IPC stands set aside. The petitioner is acquitted of the additional liability imposed under Section 75 IPC. His bail bonds, if any, shall stand discharged. He is not required to surrender.

5. Let the trial court record be transmitted back forthwith along with a copy of this order for necessary compliance. All pending applications stand disposed of.

(FARJAND ALI),J

11-Mamta/-