

**Rajinder Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/686430](http://sooperkanoon.com/686430)

**Court :** Delhi

**Decided On :** Oct-03-1988

**Reported in :** 1988(3)Crimes831; 36(1988)DLT358

**Judge :** Malik Sharief-ud-Din, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 379; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360

**Appeal No. :** Criminal Revision Appeal No. 105 of 1988

**Appellant :** Rajinder

**Respondent :** State

**Advocate for Pet/Ap. :** T.S. Verma,; M.S. Siddique and; K.K. Bakshi, Advs

**Judgement :**

**Malik Sharief-ud-Din, J.**

(1) The petitioner was tried for an offence under section 379 Indian Penal Code and was convicted and sentenced to undergo rigorous imprisonment for 2 years by the court of the Metropolitan Magistrate. First appellate court of the learned Additional Sessions Judge recorded concurrent finding and confirmed the order of conviction and sentence.

(2) The brief facts are that on 30/03/1981 at about 9 p.m. while the complainant Nanak Chand was traveling in a crowded bus the petitioner Rajinder at Chowk Pahar Ganj removed a sum of Rs. 5.00 and a card marked as Ex. P-1 and Ex. P-2 in the case from his pocket. In the process of picking the pocket of Nanak Chand, Nanak Chand caught hold of Rajinder and with the help of another person Sat Prakash and co-passengers took him to the police station where a case was registered and the stolen articles seized. I have gone through the seizure memo. In this it is faithfully stated that both the stolen goods were produced by the complainant Nanak Chand who alleged that after his pocket was picked by the petitioner he caught hold of the petitioner and recovered the stolen goods from him.

(3) At trial Sat Prakash Public Witness appears to have turned hostile and has refused to support the prosecution case. He, however, admitted that he was traveling in the same bus when an alarm was raised by the complainant that his pocket had been picked up. According to him, the petitioner was found in drunken condition and on being overpowered he was taken to the police station. He, however, states that nothing was recovered from the possession of the petitioner. The testimony of this Public Witness Sat Prakash, even though hostile to the prosecution, partly supports the prosecution that the pocket of the complainant Nanak Chand was picked up in the bus. His contention that nothing was recovered from the possession of the petitioners of no consequence because the case of the complainant is that soon after his pocket was picked by the petitioner he overpowered him and took away the goods from the petitioner. The complainant Nanak Chand has supported the prosecution case in all its material details and there is no reason to disbelieve him, particularly in view of the fact that he is not at all biased against the petitioner. In fact, he did not know the petitioner previously and there is no earthly reason for him to involve an innocent person falsely. Furthermore, this is a case where even a hostile witness has supported the prosecution case. The trial court as well as the appellate court has, therefore, in my view rightly found him guilty and sentenced him to a term of imprisonment. I find nothing improper or illegal about the order.

(4) It is, however, contended before me that the trial court ought to have considered the case of the petitioner under section 360 Criminal Procedure Code. It is also argued that the trial court was duty bound to give special reasons for not extending the benefits under section 360 to the petitioner particularly in view of his not being a previous convict. Section 360 Criminal Procedure Code confers a discretion on the court that it may, in special circumstances mentioned therein, instead of sentencing him to imprisonment direct that he be released on his entering into a bond with or without surety to appear and receive sentence when called upon during such period not exceeding three years as the court may fix. This discretion, of course, has to be exercised judiciously and not arbitrarily. Section 361 Criminal Procedure Code will come only into play if the court finds that it ought to have dealt with the case under section 360 Cr.P.C. but refuses to offer any benefit to the convict therein. In the present case, it appears that this aspect was not considered by the trial court, though the trial court has noticed the antecedents and the responsibilities of the petitioner and has made further observation that he does not deserve any leniency. The appellate court, however, has devoted a full para in its judgment to this aspect and has pointed out various reasons as to why a deterrent punishment is warranted. While in the very nature of the offence it is not possible to bring such an offender to book unless he is caught in the process of picking some body's pocket. Pick pockets belong to a trained tribe whose activities very often go unnoticed. They are further mainly operating in crowded places and buses. The fact that he is not a previous convict does not necessarily mean that he is not trained in the picking of pockets. It only shows that he was not caught earlier. This is not a case, therefore, where the court should exercise its powers under section 360 Cr.P.C. Dismissed. Revision dismissed.