

**IN THE COURT OF SH. SUSHIL ANUJ TYAGI, ASJ(FTSC)
(RC) SOUTH WEST DISTRICT, DWARKA COURTS,
NEW DELHI
CNR No.DLSW01-010646-2021
CA No. 136/2021**

Ishan Gaur

S/o Shri Rakesh Gaur
R/o 292, SF, Sainik Vihar,
Pitampur, North West,
Delhi-110034

Vs.

The State

Date of institution of case	: 29.10.2021
Date on which judgment reserved	: 13.12.2021
Date on which judgment pronounced	: 13.12.2021

JUDGMENT

1. This is an appeal under section 374 Cr. P.C. against the order dated 29.09.2021 passed by Sh. Pranat Kumar Joshi, Ld. M.M. Dwarka Courts, New Delhi in traffic challan No. DWC-0401-6181-2021, Circle DWC, Vehicle bearing No. DL-9CAT 4975 whereby the appellant was convicted and was sentenced to undergo simple imprisonment for 4 days and fine of Rs. 11,000/- under section 185 and section 194B of M.V. Act, in default of payment of fine the appellant was further sentenced to imprisonment for 7 days.

2. Brief facts of the case are that Challan No. DWC-0401-6181-2021, Circle DWC for the offence under Sections 185 and 194B MV Act was filed against the accused/ appellant on the allegations that he was found driving vehicle No. DL-9CAT 4975

in drunken condition and he was not using his seat belt.

3. Cognizance was taken by the Ld. MM vide order dated 29.09.2021. The accusation was explained to the accused/appellant to which he pleaded guilty. On his plea of guilt, the accused/appellant was convicted for the offence under sections 185 and 194B MV Act. After having heard on the point of sentence, the accused/appellant was sentenced to pay fine of Rs. 11,000/- and to undergo simple imprisonment for a period of 4 days for the offence under sections 185 and 194B MV Act, default of payment of fine the appellant was further sentenced to imprisonment for 7 days.

4. The accused/appellant has assailed the impugned order dated 29.09.2021 of the Ld. Trial Court on the grounds that the principles of natural justice have not been followed and that the appellant was not medically examined properly and that the report filed by the traffic police before the Ld. Trial Court is forged. It is alleged that the appellant is victim of improper investigation and that the order passed by the Ld. Trial Court is hasty. It is also argued that the report of alcohol testing machine is not credible and reliable. It is also argued that the accused/appellant is not a previous convict and has clean past antecedents. It is submitted that the appellant is running his business of Tours & Travels and he is the sole bread earner of his family which consists of his wife, minor daughter and old aged parents. It is submitted that accused/appellant already deposited the fine of Rs. 11,000/- which was imposed upon him vide

impugned order. It is prayed that the lenient view be taken against the accused/appellant and that the impugned order be set aside.

5. This court has heard the arguments from both the sides.

6. Ld. Counsel for appellant has argued that the sentence of 4 days imprisonment imposed by the Ld. Trial Court was exorbitant and a lenient view should be taken in the matter. Appellant was a first time offender and he was the sole bread earner of the family and had responsibility of his wife, minor daughter and old aged parents.

7. Ld. Addl. PP for the State on the other hand submitted that the appellant has been rightly convicted and sentenced for drunken driving and for not using the seat belt.

8. In the present case, the accused/appellant has voluntarily pleaded guilty to the offences and on his plea of guilt, he has been convicted. The impugned order dated 29.09.2021 records that the Ld. M.M. explained the consequences of pleading guilty to the accused/appellant but he voluntarily pleaded guilty to the offences challaned against him. As per section 375 Cr. P.C., the appellant does not have any right to appeal as he has been convicted on his voluntary plea of guilt. Therefore, this court finds no illegality, infirmity or error in the impugned order dated 29.09.2021 of the Ld. Trial Court regarding the conviction.

9. As far as the quantum of sentence is concerned, the Ld. Trial Court after considering the facts that the level of alcohol found in the blood of the convict was 179 mg/100 ml and that drunkard driver are potential danger to the society and also the fact that India accounts for the highest number of deaths in road accident cases and driving vehicle in drunken state accounts for the majority of the said accidents, the Ld. Trial Court observed that the convict do not deserve any leniency and accordingly, the sentence was passed upon the accused/appellant.

10. It is true that drunkard driver is a menace on the over crowded roads of Delhi. The driver of motor vehicles are expected to be alert to the emergent contingencies which may arise on the road and he cannot be expected to lower his guard of reflexes. The consumption of alcohol impacts the senses of a person which results in delayed responses and reflexes which results in serious and fatal accident. Thus, it is rightly said that the drunken driver is injurious to his own life as well as to the life of innocent road users. There has to be a zero tolerance for drunken driving and such cases should be dealt with stern hands for flashing proper message in the society.

11. Now, looking at the other side of the coin, this court cannot be oblivious of the fact that the accused/appellant is a first time offender and he is not a previous convict. He has clean past antecedents and he is the sole bread earner of his family which is dependent upon him for their survival. Accused/appellant has also expressed remorse for his conduct and he undertakes that he

will not repeat such act in future. Accused/appellant has also deposited the fine imposed upon him by the Ld. Trial Court.

12. This court has considered the aggravating and mitigating circumstances and this court is of the considered opinion that the appellant deserves one chance for improving himself. Therefore, taking a lenient view, the sentence of 4 days simple imprisonment is hereby modified to the sentence of imprisonment Till the Rising of the Court. The rest of the part of sentence remains unchanged.

13. The accused/appellant has now suffered the aforesaid sentence and he is accordingly released.

14. The surety stands discharged. Documents, if any, of the surety/sureties be returned to the rightful owner after due acknowledgement and endorsement, if any, made on it be cancelled accordingly.

15. The appeal is hereby disposed off. Copy of judgment be supplied to appellant free of cost. Copy of judgment be also sent to the Ld. Trial Court. **Appeal file be consigned to the Record Room after completing the necessary formalities.**

**Pronounced in open court
13th December, 2021**

**(SUSHIL ANUJ TYAGI)
Additional Sessions Judge,
Fast Track Special Court (RC)
South West District: Dwarka Courts:
New Delhi**