

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.PET. No.593/2009**

Decided on 10.09.2010

IN THE MATTER OF :

SUKHMAL CHAND JAIN Petitioner
Through: Mr.R.P. Luthra with
Ms. Aditi Sambhar, Advs.

versus

STATE Respondent
Through: Mr. M.N. Dudeja, APP for State.

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

- | | |
|--|-----|
| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The petitioner has filed the present revision petition under Section 401 Cr.P.C., against the judgment dated 21.10.2009 passed by the learned Additional Sessions Judge, disposing of the appeal preferred by him against the judgment dated 25.11.2004, passed by the learned Metropolitan Magistrate in respect FIR No.140/1992, convicting him for the offences under Section 420 read with Section 511 IPC, besides conviction under Sections 468 and 471 IPC, followed by an order of sentence dated 30.11.2004 sentencing him to undergo imprisonment for a period of 2½ years each for the offences under Section 468 IPC and Section 420 read with Section 511 IPC, apart from imposition of fine of ₹ 2,500/- each for the two

offences and, in default of payment of fine, to undergo simple imprisonment for one month each for the said offences. In addition, the petitioner was sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹ 1,000/- for the offences under Section 471 IPC and in default of payment of fine, he was directed to undergo simple imprisonment for 7 days.

2. Under the impugned judgment, the learned ASJ dismissed the appeal of the petitioner and confirmed the order of conviction passed against him. However, on the order on sentence, he reduced the sentence of imprisonment for the offences under Section 420 read with Section 511 IPC and Section 468 IPC from 2½ years each to rigorous imprisonment for one year each. Similarly, the sentence of imprisonment for the offence under Section 471 IPC was reduced from one year rigorous imprisonment to six months rigorous imprisonment. The sentence of fine imposed on the petitioner was however maintained and confirmed. It was ordered that the imprisonment awarded for different offences would run concurrently, while granting the petitioner the benefit of Section 428 of the Cr.P.C. Aggrieved by the aforesaid judgment in appeal, the petitioner has preferred the present revision petition.

3. At the outset, counsel for the petitioner states that the petitioner does not propose to assail the impugned order of conviction on merits and confines his submissions to the order of sentence by requesting that the petitioner be released by reducing the sentence to the period undergone by him, from 21.10.2009, the date on which the impugned judgment came to be passed, till 29.1.2010, which is stated to be the date of his release, on

the basis of order dated 25.01.2010 passed in the present petition, which totals to 109 days.

4. Briefly stated, the facts of the case are that the petitioner was facing trial under Section 420 read with Section 511 IPC and Sections 468 and 471 IPC on the allegations that on or before 30.11.1991, he attempted to cheat the Department of Telecommunication, Ministry of Communication, Government of India, while making a forged letter, purportedly signed by a Member of Parliament, addressed to the then Minister of State for Communication, Government of India, requesting him to write a letter to the Telephone Department for sanctioning telephone connections to 5 individuals and that he forged the aforesaid letter for the purpose of cheating and used the same as genuine, knowingly very well that the same was a forged document.

5. After completion of the investigation, a charge sheet was filed. Charges were framed against the petitioner on 4.10.1996. The petitioner pleaded not to be guilty. In the course of trial, about 10 witnesses were examined. Pertinently, the learned Metropolitan Magistrate noticed that not a single question was asked in the cross-examination to PW-6 Ram Kumar, one of the prime witnesses, who had stated that he had paid a sum of ₹ 5,000/- to the petitioner for installation of a telephone on priority basis. In the absence of any challenge to the testimony of PW-6, the learned Metropolitan Magistrate relied on the same and arrived at a conclusion that it was proved by the prosecution beyond any reasonable doubt that the accused had contacted the 5 persons (PWs-2,3,6,8 & 9) and it was proved

that he had received a sum of ₹ 5,000/- from PW-6, Shri Ram Kumar to get his telephone connection sanctioned.

6. A perusal of the judgment dated 25.11.2004 shows that in para 5, it was recorded that the petitioner had stated that he had studied upto Class IV, did not know english and only knew a little Hindi and that he was working as a salesman in a shop, selling cloth.

7. Counsel for the petitioner states that though a counsel was engaged by the petitioner, he did not perform his duty as he had failed to cross-examine most of the witnesses produced by the prosecution. It is further stated that the records of the trial court show that PWs- 1,5,6,9 & 10 were not cross-examined despite opportunity granted to the accused, and though an opportunity was also granted to him to cross-examine PW-7 & PW-8, but counsel for the accused did not appear despite the fact that the court waited for him for sometime.

8. Counsel for the petitioner submits that it is apparent from the above that the counsel for the defence failed to discharge his duty to ensure an effective trial for the petitioner, to meet the case of the prosecution. He states that in such circumstances, the trial itself stands vitiated and the impugned judgment ought to be set aside and the matter remanded back for fresh trial. But, instead of prolonging the agony of the petitioner further, he submits that the petitioner confines the relief in the present case to reduction of the order of sentence to the period undergone.

9. A perusal of the trial court record in the present case brings out the non-effective assistance rendered by the defence counsel who failed to cross-examine most of the witnesses produced by the prosecution and further, failed to appear on many dates when the court waited for the counsel for the defence, for cross-examining the witnesses. It is apparent from the record that most of the witnesses of the prosecution have not been cross-examined at all in reference to their testimony and the material available on the record. In such a case, the blame is attributable not only to the counsel for the defence, but also to the trial court judge who ought to have ensured a fair opportunity of defence to the petitioner, to meet the principles of fair trial and adequate representation in criminal law.

10. Now, facts of the present case reveal that the date of commission of offence was 30.11.1991 and the FIR was lodged in this regard in the year 1992. The trial prolonged for almost 12 years and concluded in the judgment dated 25.11.2004 passed by the learned MM, followed by an order of sentence dated 30.11.2004. The aforesaid judgment was taken in appeal by the petitioner in the year 2004 itself. The proceedings in appeal came to a conclusion after a period of 5 years, when the impugned judgment came to be passed on 21.10.2009. In other words, the present trial has spread over a period of about 18 years. The petitioner was about 36 years of age at the time of commission of the purported offence and he is now about 54 years of age and admittedly, he has not been involved in any other criminal case. He is stated to be still working in the same shop where he was working as a salesman in the year 1991. It is stated by the counsel for the petitioner that the petitioner has got assimilated as a useful citizen in the

main stream of the society. He has discharged his duties as a responsible father by imparting education to his three sons, out of whom, two are now gainfully employed and the third son is studying on scholarship in an engineering college at Bangalore. It is further to be noted that the petitioner has already paid the fine imposed on him and has undergone conviction for a period of 109 days. No useful purpose shall be served by requiring the petitioner to undergo the remaining portion of the sentence. Learned APP for the State has no objection, if the sentence of the petitioner is reduced to the period undergone.

11. In view of the peculiar facts and circumstances of the case, as noted above, the present petition is accordingly disposed of by upholding the impugned judgment on merits but reducing the sentence to the period undergone by the petitioner. As the petitioner is on bail, the bail bond and the surety stand discharged.

SEPTEMBER 10, 2010
sk

HIMA KOHLI,J