

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-632-MA-2015 (O&M)
Date of decision : 10.12.2015

Gurnam Singh

...Applicant

Versus

Jasvinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ajay Kamboj, Advocate,
for Mr. P.S. Jammu, Advocate,
for the applicant.

JITENDRA CHAUHAN, J.

The applicant seeks leave to appeal against the impugned judgment dated 05.02.2015, passed by the learned Judicial Magistrate 1st Class, Sirsa, thereby, acquitting the accused-respondent in criminal complaint No.64-1 of 2009/2012, under Sections 420, 120-B of the Indian Penal Code (for short, 'the IPC').

Brief facts of the case, as noticed in para No.2 of the impugned judgment, are reproduced as under:-

“2. Briefly stated, it has been alleged by the complainant that maternal aunt of accused no.1 Jasvinder Singh resides in village Mojukhera and both the accused-persons used to frequently come to her house. The complainant being the resident of the same village became

acquainted with the accused. It has been alleged that about two years ago, accused no.2 Kiranjit Kaur came to the house of the complainant to meet his wife and told her that her husband i.e. accused no.1 does the work of arranging visa for the persons interested to visit foreign countries. She further disclosed that her husband is a Govt. employee and she further told to the complainant's wife that if any of her son wants to go abroad, then her husband can arrange visa for him. Upon this, again both the accused-persons came to the house of the complainant on the next day and asked the complainant to send his son Manjit Singh to foreign country. It has been alleged that upon this, the complainant expressed his willingness to send his son Manjit Singh to abroad, upon which they assured the complainant that they would send Manjit Singh to abroad within a month. It has been further submitted that the accused-persons asked the complainant and his wife to arrange the amount of ₹9 lacs for the said purpose. On this, the complainant made payment of amount of ₹5 lacs to the accused-persons in the presence of witnesses Sukhvinder Singh and Kashmir Singh. It was further agreed that the remaining amount of ₹4 lacs shall be paid after the visa will be arranged by the accused-persons to send the son of the complainant abroad. It has been further

alleged that the accused-persons arranged the visa for the son of the complainant and received ₹4 lacs from the complainant. Thereafter, Manjit Singh was sent to Bangalore from Delhi and thereafter, he was again sent to Delhi on the pretext that the process of arrangement of visa will take more time. However, the son of the complainant namely Manjit was mentally disturbed and he told him that he felt harassed as the accused-persons were harassing him unnecessarily and thus he felt mentally disturbed. It has been further submitted that while living at Bangalore and while visiting Bangalore to Delhi, the son of the complainant spent ₹1,40,000/-. It has been further alleged that thereafter, complainant met the accused-persons and asked them to refund his money, upon which they told him that in such cases harassment is bound to happen and they can send their other son Baljit Singh instead of Manjit Singh and they can arrange the visa for Baljit to Germany. It has been further alleged that instead the accused-persons arranged the visa of Baljit Singh for Malaysia and Baljit Singh stayed there for three months. It has been further submitted that although the accused-persons told the complainant that they will arrange visa of Baljit Singh for Malaysia instead of Germany for three months, from where he will be sent to Germany, but no visa was

arranged for Germany and Baljit Singh came back to India from Malaysia as he felt harassed. It has been further submitted that as soon as Baljit Singh landed at India, the accused-persons deprived him of his original passport on the assurance that they will arrange visa for him from Delhi to Germany. It has been further submitted that the accused-persons handed over a forged and fictitious visa and told Baljit Singh that he will soon receive the air ticket and passport. It has been further submitted that Baljit Singh suffered a loss of ₹70,000/- during his stay at Malaysia and his travelling expenses for coming and going from Malaysia amounted to ₹1,10,000/-. It has been further submitted that thereafter the complainant and his wife met the accused-persons and asked for refund of the money, but they kept postponing the matter on one pretext or the other and kept assuring that Baljit Singh would be sent to Germany. However, when the complainant went to the house of the accused along with witnesses Sukhwinder Singh, Kashmir Singh and Shri Ram Chander, Lamberdar of village Mojukhera and demanded amount of ₹9 lacs, accused no.2 became angry and refused having received any money from the complainant and also refused to send Baljit Singh to Germany and further refused to refund the money. It has been further alleged that thereafter left with

no other option, the complainant filed the present complaint.”

In the preliminary evidence, the complainant Mahender Parkash got examined Sukhdev Kaur as PW1, Sukhwinder Singh as PW2, Kashmir Singh as PW3, Gurnam Singh, complainant as PW4, and Manjit Singh as PW5.

The accused were summoned to face trial for the commission of offence punishable under Sections 420 read with Section 120-B IPC, vide order dated 17.7.2010.

Upon notice, the accused put in appearance. He was admitted to bail by this Court.

In the pre-charge evidence, the complainant himself appeared as PW1 and got examined Sukhdev Kaur as PW2, Kashmir Singh as PW3 and Manjit Singh as PW4 and after tendering certain documents, closed the evidence.

Accused were charged for commission of offence under Sections 120-B and 420 IPC, to which they pleaded not guilty and claimed trial. In the after-charge evidence, the accused chose to cross-examine Gurnam Singh as PW1, Manjit Singh as PW2, Sukhdev Singh as PW3 and Kashmir Singh as PW4. In addition, the complainant further tendered documentary evidence which was earlier tendered by him in his pre-charge evidence.

In their statements recorded under Section 313 Cr.P.C., the accused denied all the allegations levelled against them and pleaded

false implication. They denied having received the amount of ₹5 lacs from the complainant or ever sending their son to Bangalore. They further denied having taken amount of ₹4 lacs. The accused further denied that the complainant or any other person came to them for demanding the repayment of the amount. However, they did not lead any evidence in defence.

The learned trial Court, after hearing learned counsel for the parties and perusing the evidence on record, acquitted the accused-respondents of the charges framed against them.

Hence, the present application for leave to file appeal against the impugned judgment of acquittal.

I have heard learned counsel for the parties and gone through the record.

The complainant, appearing in his pre-charge evidence as PW1 had deposed that an agreement was reached between him and the accused persons for sending his son, Manjit Singh abroad. An amount of ₹9 lacs was agreed to be paid to the accused persons and the entire amount was paid at village Mojukhera at different intervals. The accused arranged the visa for Cuba, however, the son of the complainant, Manjit Singh was sent to Bangalore. He stayed there for one month and spent about ₹4 lacs. When the accused were unable to send Manjit Singh to Cuba, they proposed that Baljit Singh could be sent to Germany. However, Baljit Singh was sent to Malaysia instead of Germany and upon his return to India, the accused seized his

passport. He also deposed that Kashmir Singh and Ram Chander, Lamberdar, were present at the time of handing over of money to the accused. On the other hand, during his cross-examination, he was unable to state the date, month or year, when Manjit Singh was sent to Bangalore or when he returned. The complainant also did not produce any receipt of the money order which he allegedly sent to his son, Manjit Singh, during this period. Moreover, he could not tell the name of place in Malaysia, where his other son, Baljit Singh, had stayed. He was also unable to tell the date, month or year when the accused refused to return the amount which he had taken from the complainant.

The son of the complainant, Manjit Singh, was cross-examined as PW2. This witness also could not tell the date, month or year when he went to Bangalore. He deposed that he had stayed in a hotel, but he was unable to tell the name of the hotel. He further deposed that his brother, Baljit Singh took an amount of ₹1 lac with him before leaving for Malaysia. During his stay in Malaysia, Baljit Singh was jailed for one month and he was bailed out by a surety. However, this witness could not tell the name or place of the jail, the time period for which Baljit Singh was in jail or the name of the surety.

Sukhdev Kaur, PW-2, in her pre-charge evidence deposed that the payment was made by them to the accused persons in the presence of witnesses. However, she could not specify the date of making the payment to the accused. Also, she could not tell the date or time when her son went to and returned from Bangalore. Similarly,

Kashmir Singh, PW3, stated that Jasvinder Singh and his wife Kiran Kaur had entered into an agreement with complainant to send Manjit Singh to Malaysia and the amount of ₹9 lacs was agreed to be paid to them. The amount was to be paid in three installments out of which they had paid the first installment and remaining two installments were to be paid after the visa was arranged. He further deposed that they did not send them abroad, rather they were sent to Delhi and then to Bangalore. However, in his cross-examination, while appearing as PW4 in the after-charge evidence, he deposed that Gurnam Singh is his brother-in-law. He further deposed that he could not tell the date, month or year when he had asked the accused to refund the money.

Thus, from the quality of evidence led by the complainant, it is not safe to fasten criminal liability upon the accused. The complainant has failed to prove on record that the accused-persons had any dishonest intention to cheat the complainant or to deceive him to pay ₹9 lacs to them. The testimonies of the prosecution witnesses lack specificity with regard to the dates of commission of offence and entering into transaction. The payment of amount, as such, is also not proved to bring home guilt under Section 420 IPC against the accused.

In view of the above, this Court feels that the impugned judgment of acquittal recorded by the learned trial Court does not suffer from any illegality or perversity. The complainant/prosecution has failed to prove its case against the accused-respondent beyond a shadow of reasonable doubt.

In view of the above, the present application is dismissed.

Leave declined.

10.12.2015

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(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to the Reporter ? : Yes / No