

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-948-2006 (O&M)

Date of Decision: December 23, 2015

Shamsher Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sandeep Gahlawat, Advocate,
for the petitioner.

Mr. Kuldeep Tiwari, Addl. AG, Haryana,
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

NARESH KUMAR SANGHI, J (Oral)

Challenge in this criminal revision petition is to the judgment dated 22.4.2006, passed by learned Additional Sessions Judge, Kaithal, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offences punishable under Sections 420, 468 and 471 IPC,

recorded by learned Additional Chief Judicial Magistrate, Kaithal, was dismissed.

At the very outset, learned counsel representing the petitioner submits that in view of concurrent findings of both the Courts below, he does not challenge the conviction of the petitioner for the offences punishable under Sections 420, 468 and 471, IPC. He, however, submits that in view of totality of the facts and circumstances of the case, the substantive sentences awarded to the petitioner are on higher side. He submits that the petitioner had applied for grant of loan to the District Industries Centre, Kaithal, to establish his business. One of the essential requirements was that the applicant must carry Matriculation certificate. While applying for grant of loan, the petitioner allegedly used the forged detailed marks sheet of Matric and, as such, the case was registered. He further submits that the petitioner is neither required nor involved in any other case.

It has been substantiated on record that just to establish his own business, the petitioner had applied for grant of loan. The loan was not disbursed to him (petitioner) and admittedly no loss was caused to any person/Government exchequer. The petitioner is facing the agony of trial, appeal and

revision for last more than eighteen years. During pendency of trial, appeal and present revision petition, the petitioner remained on bail, but he did not misuse the said concession. The petitioner was granted bail while suspending his sentence by this Court, vide order dated 18.7.2006 and he was actually released from the jail on 22.7.2006. In the meantime, he had suffered incarceration for three months and thirteen days. During his incarceration, he was in process of improving himself and behaved properly in the jail. After a gap of nine years from the date of his release from the jail, especially when he has re-joined main stream in the society, it would be harsh to send him to jail once again.

Learned counsel for the State has no objection to the first prayer of the counsel for the petitioner when he submitted that he did not want to argue the case on merits. He further submits that no leniency is to be shown to the petitioner in his substantive sentences. However, he has fairly admitted that the petitioner is neither required nor involved in any other case and he has already suffered incarceration for three months and thirteen days. He further fairly admits that foul play of the petitioner was detected and, as such, the loan was not disbursed

to him and there was no loss to the exchequer.

I have heard learned counsel for the parties and with their assistance gone through the material available on record.

Though learned counsel for the petitioner has opted not to challenge the conviction of the petitioner, yet to satisfy the conscience of this Court, the material available on record has been reappraised.

The present case was registered on the basis of letter (Ex.PA) issued by Shri A.K. Grovar (PW4), District Industries Manager, Kaithal, wherein it was alleged that while applying for grant of loan, the petitioner had attached a forged and fabricated detailed marks sheet of his Matriculation examination. After thorough verification, FIR No. 198, dated 4.3.1997, for the offences punishable under Sections 420, 468 and 471, IPC, was registered at Police Station, Sadar, Kaithal. After investigation, the charge-sheet was presented before learned Area Judicial Magistrate. Finding a *prima facie* case, the charges for the offences punishable under Sections 420, 468 and 471, IPC, were framed vide order dated 17.3.1998, to which the petitioner pleaded not guilty and claimed trial.

In order to substantiate its case, the prosecution

examined Satbir Singh, Clerk, as PW1; Mohinder Partap Bakshi, Assistant to Secretary Board of School Education Haryana, as PW2; ASI Jaimal Singh as PW3; and A.K. Grover, General Manager, as PW4. After adducing documentary evidence in the shape of Exs. PA to PJ and Mark 'A' to 'E', learned Additional Public Prosecutor closed the prosecution evidence.

The statement of the petitioner in terms of Section 313, Cr.P.C., was recorded. He denied all the allegations and pleaded false implication.

Learned Trial Court held the petitioner guilty and awarded various terms of sentences. The appeal filed by the petitioner was also dismissed by learned Additional Sessions Judge, Kaithal.

After perusing the Lower Courts record, this Court finds that the verdict of guilt returned by both the Courts below is well based and no interference of this Court is required. In view of the said fact, learned counsel for the petitioner has correctly opted not to challenge the conviction of the petitioner.

There appears to be substance in the alternative arguments of learned counsel for the petitioner that just to establish his own business, the petitioner had applied for grant

of loan; the loan was not disbursed to him (petitioner) and admittedly no loss was caused to any person/Government exchequer; the petitioner is facing the agony of trial, appeal and revision for last more than eighteen years; during pendency of trial, appeal and present revision petition, the petitioner remained on bail, but he did not misuse the said concession; the petitioner was granted bail while suspending his sentence by this Court, vide order dated 18.7.2006 and he was actually released from the jail on 22.7.2006; he had suffered incarceration for three months and thirteen days; during his incarceration, he was in process of improving himself and behaved properly in the jail; and that after a gap of nine years from the date of his release from the jail, especially when he has re-joined main stream in the society, it would be harsh to send him to jail once again, therefore, the substantive sentences of the petitioner can be reduced to the period already undergone by him.

In view of above, the present criminal revision petition is partly allowed. The substantive sentences for the offences punishable under Sections 420, 468 and 471, IPC, recorded by learned Additional Chief Judicial Magistrate Class, Kaithal, are modified and reduced to the period already undergone by the

petitioner, i.e. three months and thirteen days. However, there would be no change in the order of fine and sentence passed in default of payment thereof.

(NARESH KUMAR SANGHI)
JUDGE

December 23, 2015
P Kapoor