

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR No.1158 of 2014(O&M)  
Date of decision: 06.01.2015

Raju

.....Petitioner

versus

State of Punjab

.....Respondent

CRR No.2141 of 2014(O&M)

Avtar Singh @ Lucky

.....Petitioner

versus

State of Punjab

.....Respondent

**CORAM: Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.Sandeep Arora, Advocate for the petitioner in  
CRR No.1158 of 2014  
Mr. Manoj Pundir, Advocate for  
Mr.Daygeesh Kumar Bhatti, Advocate for the petitioner in  
CRR No.2141 of 2014  
Mr.Nikhil K. Chopra, DAG Punjab

1. *Whether Reporters of Local Newspapers 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?*

**Kuldip Singh, J.**

This order will dispose of two revision petitions bearing CRR No.1158 of 2014 filed by Raju and CRR No.2141 of 2014 filed by Avtar Singh @ Lucky, against judgment dated 12.3.2014 passed by the learned Additional Sessions Judge, Jalandhar affirming that of learned Chief Judicial Magistrate, Jalandhar dated 8.11.2011 vide which they were convicted under Sections 120B, 420, 465, 467, 468

**IPC and sentenced as under:-**

|                               |                                                                                                                                                           |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Under Section 120B IPC</i> | <i>Sentence to undergo RI for a period of one year and to pay a fine of Rs.500/- each and in default of payment of the fine further RI for 10 days.</i>   |
| <i>Under Section 420 IPC</i>  | <i>Sentence to undergo RI for a period of one year and to pay a fine of Rs.500/- each and in default of payment of the fine further RI for 10 days.</i>   |
| <i>Under Section 465 IPC</i>  | <i>Sentence to undergo RI for a period of six months and to pay a fine of Rs.500/- each and in default of payment of the fine further RI for 10 days.</i> |
| <i>Under Section 467 IPC</i>  | <i>Sentence to undergo RI for a period of two years and to pay a fine of Rs.1000/- and in default of payment of the fine further RI for 10 days.</i>      |
| <i>Under Section 468 IPC</i>  | <i>Sentence to undergo RI for a period of two years and to pay a fine of Rs.1000/- and in default of payment of the fine further RI for 10 days.</i>      |

All the sentences were ordered to run concurrently.

The prosecution story is that on 9.9.2006, ASI Lakhbir Singh along with his fellow officials, was present at PNB Chowk Jalandhar where he received a secret information that Avtar Singh son of Daulat Ram and Raju son of Ramesh Kumar accused are working with Assistant Development Officer in LIC office main branch and had been committing theft of cheques prepared by LIC Jalandhar and encashing the same by opening the fictitious accounts of the policy holders. Further information was received that even now they are ready to withdraw the amount and if raid is conducted they can be apprehended. As the information was credible, a Ruqa was sent to the police station, where FIR bearing No.241 of 9.9.2006 under Sections 420, 380, 465, 467, 468 read with section 34 IPC was registered at P.S.Division No.4, Jalandhar, District Jalandhar.

Thereafter, police party headed by ASI Lakhbir Singh along with the police officials reached main gate of LIC office and apprehended Avtar Singh @ Lucky on the basis of suspicion. From his personal search, cheque book bearing Account No.8453 of the Citizen Urban Cooperative Bank Limited in the name of Jashandeep Singh and Form No.047911 to 047920 were recovered, which were taken into possession. During investigation, accused Avtar Singh disclosed that co-accused Raju and Harsh Wardhan are also involved in the crime. They were also arrested. Harsh Wardhan was juvenile and a separate challan was ordered to be presented against him before Juvenile Justice Board.

Accused Avtar Singh and Raju were charge sheeted under Sections 120B, 420, 465, 467, 468 IPC.

To prove its case, the prosecution examined Nirmal Singh (PW1), Pawan Kumar, Manager of Citizen Urban Cooperative Bank Ltd. Jalandhar (PW2), Achru Ram Bhandari, Manager of Citizen Urban Cooperative Bank Inspection Cell, Jalandhar (PW3), Kirpal Singh Branch Manager of LIC Office (PW4), Harjeet Malhotra (PW5), SI Lakhbir Singh (PW6) and prosecution evidence was closed by order on 20.9.2011.

When examined under Section 313 Cr.P.C., the accused claimed innocence. The accused did not lead any evidence in defence.

The allegations against both the accused are that they had been stealing the cheques issued to LIC policy holders and then opening fictitious accounts in the names of the policy holders and

encashing the said cheques. Only one of the such policy holders, namely, Nirmal Singh was examined. He stated that he had not collected the cheque dated 28.2.2006 for Rs.41862/- and the same was encashed by the accused by opening an account in his name in Citizen Urban Cooperative Bank Limited Partap Bagh, Jalandhar. After going through the account opening form, he stated that on the said form, his name and name of his father is correct but address and occupation is wrong. The photograph pasted on the account opening form is also of some other person. The cheque had been encashed on 3.3.2006.

The prosecution was required to prove that the accused had committed the theft of the cheque and that they had in fact opened the fictitious account and then they got the cheque encashed. Nirmal Singh was not present when the cheque was got encashed. Somebody opened the account in his name bearing correct name of his father but with wrong particulars and bearing photograph of some other person. Prosecution was required to prove as to who was the person who had opened that account and who had encashed the cheque on 3.3.2006.

Mr.Pawan Kumar, Manager of Citizen Urban Cooperative Bank Jalandhar proved account opening form of Sucha Singh, Nirmal Singh, Sushil Marwaha, Ashok Kumar Dang and Jashandeep Singh. Mr.Achru Ram Bhandari, Manager of Citizen Urban Cooperative Bank Inspection Cell, Jalandhar proved that account No.2368 is of one Avtar Singh and his wife Sadhna and was opened on 20.4.2004.

Kirpal Singh Manager of LIC Office has merely proved that accused

were working in their branch as Assistants with the Development Officer. Harjeet Malhotra (PW5) has stated that he had witnessed the account opening form of Avtar Singh accused and his wife Sadhna.

The trial Court took into consideration the fact that one Sucha Singh was identified by Avtar Singh accused in opening the account No.7875 (Ex.PW2/A) in the name of fictitious person. Said Sucha Singh was identified by accused Avtar Singh when said Sucha Singh had opened his account. Various account Nos.8057, 8206, 8342 and 8453 were opened by Nirmal Singh, Sushil Marwaha, Ashok Kumar and Jashandeep Singh. On the account opening form (Ex.PW2/C), there is photograph of Raju. Now the fact is that Avtar Singh accused had correctly identified Sucha Singh when Sucha Singh had opened his account. Later on, Sucha Singh identified various applicants for opening bank accounts, which were found to be fictitious. Now from the said fact whether it can be presumed that entire process of opening the fictitious accounts was identified/ managed by Avtar Singh accused and whether it can be presumed that Raju had himself pasted his photograph on one of the fictitious account opening forms?

After going through the file, I am of the view that the crime was certainly committed. However, it appears that the investigating officer lacked the skill to investigate the white-collar crime. Avtar Singh accused and his wife had opened the joint account bearing No.2368 on 20.4.2004. (Ex.PW3/A). There is nothing wrong in the same. He was identified by Harjeet Malhotra. The other account in

the name of Sucha Singh was opened on 19.9.2005 i.e. more than one year later and he was identified by Avtar Singh accused. This account is also not stated to be fake. However, the ration card of said Sucha Singh was attached with the said account opening form. The account opening form of Nirmal Singh (Ex.PW2/B) shows that it is dated 28.10.2005 i.e. much later. He was identified by Sucha Singh. Avtar Singh and Raju accused did not identify him. The mere fact that account opening form bears the photograph of Raju, cannot be stretched to conclude that it was Raju, who had opened the account in the fake name. It is to be noted that with the said form, the photocopy of passport of Nirmal Singh bearing same photograph was also attached, wherein the address is also mentioned. It was in this account that cheque of Rs.41862/- was deposited and got encashed. There is absolutely no evidence in the form of withdrawal form, examination of signatures thereon to prove as to who had withdrawn the said amount. In fact, no record of withdrawal was placed on file.

Then account opening form of Sushil Marwaha (Ex.PW2/C) shows that he was identified by Nirmal Singh. Even in the said form, copy of the passport bearing same photograph is attached as a proof of address and identification. More or less similar is the case of Ashok Kumar Dang where the account was opened on the identification of Sushil Marwaha. The account opening form is Ex.PW2/D. A copy of the ration card of the father of the applicant is attached as a proof of identification. In the case of account opening form of Jashandeep Singh (Ex.PW2/E) the story is

more or less the same. Therefore, there is no evidence to connect the accused with the said account opening forms, which were opened after obtaining sufficient proof. The investigating agency did not collect any evidence as to who had stolen and deposited the cheque in the said account by procuring the deposit form and the original cheque. No evidence was collected in the form of withdrawal form to show as to who had withdrawn the amount. Comparison of signatures on the form depositing the cheque and withdrawing the amount could have proved as to who is responsible for the deposit and withdrawal of the said amount. Accused cannot be convicted merely on the basis of presumptions, conjectures and surmises. Both the accused have been convicted merely on the ground that there are account opening forms and that Sucha Singh, who had later on identified the fake account opening of Nirmal Singh was identified by Avtar Singh accused when he had opened the account. Sucha Singh was not brought on book.

I am of the view that the case of the prosecution is a complete failure. No conviction can be based on such type of sketchy evidence and on the basis of presumptions, surmises and conjectures. In the criminal case, guilt of the accused has to be proved beyond all reasonable doubts.

Accordingly, I am of the view that the judgments of both the Courts below are perverted and based on insufficient evidence. Therefore, these are not sustainable in the eyes of law. Accordingly, the impugned judgments dated 12.3.2014 passed by the learned Additional Sessions Judge, Jalandhar and dated 8.11.2011 passed

by the learned Chief Judicial Magistrate, Jalandhar are set aside.

Consequently, the accused stand acquitted of the charges framed against them. They be released forthwith if not required in any other case.

**06.01.2015**

*gk*

**(Kuldip Singh)  
Judge**