

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1968-2015 (O&M)
Date of decision: 06.07.2015

Kesar Singh

... Petitioner

Vs.

State of U.T. Chandigarh and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. A.S. Sullar, Addl. PP, U.T., Chandigarh.

Mr. Deepak Bhardwaj, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Instant criminal revision petition is directed against the impugned judgment dated 14.05.2015 passed by learned Additional Sessions Judge, Chandigarh, whereby conviction of the petitioner recorded by the learned trial Court under Section 420 of the Indian Penal Code ('IPC' for short), was upheld, however, sentence was reduced from three years R.I. to two years R.I.

Brief facts of the case, as recorded by the learned Additional Sessions Judge, Chandigarh in para 2 of the impugned judgment, are that the complainant Hardesh Kumar presented a written complaint to the Senior Superintendent of Police, Chandigarh to the effect that he worked as Driver in

Electricity Board at Naraingarh. He knew Jeet Singh very well, who resides in Hallo Majra as he was having land in Village Kanjala, near Naraingarh. Above Jeet Singh told him that in their village Hallo Majra, one Kesar Singh was there who could send his son to England. In November, 2003 he along with Sukhdeep Singh, Jeet Singh and Billu came to the house of accused in Hallo Majra. He told them that he can send his son Sukhdeep to England. The deal was settled for Rs.6 lacs. On the very next day, he along with Sukhdeep Kaushik, Jeet Singh, Billu came to house of Kesar Singh and delivered him Rs.50,000/-. Above Kesar Singh told them to make remaining payment as soon as possible and he would send son of complainant abroad within three months of making of full payment by them. Accused Kesar Singh again made a telephonic call to them and asked for remaining amount so that he could arrange for sending his son to England within three months. In the month of March, 2004 they again went to the house of accused Kesar Singh and delivered Rs.2,50,000/-. He went to the house of accused Kesar Singh along with his son Sukhdeep, Jeet Singh, Jagdeep Singh at his village Hallo Majra and the accused handed over the amount to his wife and his son for safe custody. Again a telephonic message was received by them to arrange the remaining amount. Thereafter, in the next meeting, accused introduced them with one agent namely Rajan, resident of Sector-44, Chandigarh and told them that above Rajan was like his son. Thereafter, accused made a demand for remaining payment and in the month of July, 2004, complainant again delivered Rs.2,60,000/- to the accused Kesar Singh at his house in the presence of Roshan Lal, Sukhdeep Kumar and Jagdeep @ Billu, on the assurance of accused that accused would send his son abroad. Thereafter,

Kesar Singh asked complainant to arrange Rs.40,000/- by pretending that he had arranged the work permit of complainant's son in England, which the complainant delivered, in the presence of Sukhdeep and Billu. When entire amount was handed over to accused, complainant made a telephonic call to Kesar Singh regarding sending of his sons abroad. Kesar Singh asked complainant's son to appear in interview at Coimbatore, for which complainant's son went only to find nothing there.

The complaint having been moved by the complainant, on the basis of abovesaid allegations, was enquired into by the police and thereafter, FIR was registered. Investigation was carried out. The relevant record was taken into police possession. On conclusion of the investigation, police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C.' for short) was presented to the learned Court of competent jurisdiction. Copy of challan was supplied to the accused, as per the provisions contained in Section 207 Cr.P.C. On perusal of the material brought on record, a prima facie case was found to be made out against the accused. Accordingly, he was charge-sheeted for the offences under Section 406, 420 IPC and Section 24 of the Immigration Act. The accused pleaded not guilty and claimed trial.

With a view to substantiate the allegations levelled in the FIR, prosecution examined as many as eight witnesses, besides producing other relevant record. After closing the prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded. All the incriminating material available on record was put to him. The accused denied all the allegations and alleged false implication. However, accused did not lead any evidence in his defence.

After hearing the parties and going through the evidence brought on record, the learned Judicial Magistrate 1st Class, Chandigarh convicted the petitioner for the offence under Section 420 IPC, whereas the prosecution failed to bring home the guilt against the petitioner qua other offences alleged against him. Accordingly, vide order of sentence of even date i.e. 25.11.2013, learned trial Court awarded the sentence to the petitioner for a period of three years R.I. and a fine of Rs.1,000/-. In default of payment of fine, the convict was directed to further undergo imprisonment for one month. Petitioner filed his appeal before the learned Sessions Court, Chandigarh which came to be decided by the learned Additional Sessions Judge, vide impugned judgment dated 14.05.2015, upholding the conviction of the petitioner but reducing his sentence from three years R.I. to two years R.I. Hence this criminal revision petition.

As the petitioner has arrived at an amicable settlement with the respondent-complainant by way of compromise dated 21.05.2015 (Annexure P-1), though after conviction, notice of motion was issued by this Court vide order dated 28.05.2015. Thereafter, sentence of the petitioner was suspended by this Court vide order dated 16.06.2015 passed in CRM-M-18035-2015.

Learned counsel for the petitioner submits that pursuant to the compromise dated 21.05.2015 arrived at between the parties, vide Annexure P-1, petitioner paid an amount of Rs.3 lacs to respondent No.2-complainant and after noticing this fact, this Court granted the concession of suspension of sentence to the petitioner vide order dated 16.06.2015. He further submits that in compliance of the order dated 16.06.2015 passed by this Court and also in terms of the compromise (Annexure P-1), petitioner has paid the remaining

amount of Rs.3 lacs to the complainant-respondent No.2 by way of bank draft dated 04.07.2015. Learned counsel for the petitioner places reliance on the judgments in **Deva Ram Vs. State of Rajasthan and another, 2014 (13) SCC 275**, **Khaja Nayeemuddein Vs. State of Andhra Pradesh, 2000 (4) Crimes 117**, **Jasbir Singh Vs. State of Punjab, 2000 (3) RCR (Crl.) 220**, **Ram Nath and others Vs. State of Haryana, 2009 (5) RCR (Crl.) 553**, **Darshan Singh and others Vs. State of Punjab and another, 2001 (2) AICLR 375**, **Roshan Vs. Smt. Jai Janti, 2000 (4) RCR (Crl.) 216**, **Chet Singh Vs. State of Punjab, 2011 (6) RCR (Crl.) 1254** and **Kulwinder Singh and others Vs. State of Punjab and another, 2007 (3) RCR (Crl.) 1052**, to contend that since the parties have amicably settled the matter, present petition deserves to be allowed, by acquitting the petitioner of the charges framed against him.

In **Deva Ram's case** (supra), the Hon'ble Supreme Court in paras 4, 6 and 7 of the judgment, observed as under: -

“An application has been filed in this Court by the appellant praying that in view of the settlement, offence may be permitted to be compounded. It is stated that the original complainant and the appellant are close relatives. It is stated that the original complainant expired on 30/05/1994. Thereafter, the son of the complainant is not keen on prosecuting the proceedings. The appellant is a senior citizen who suffers from various ailments. It is further stated that due to intervention of the elders of the village, dispute between the parties is resolved. The appellant has agreed to pay settlement amount to Arjun Ram. It is further

stated in the application that the appellant has paid the fine amount. An affidavit has also been filed by Jagdish Prasad, Power of Attorney holder of the appellant confirming that the matter is settled.

We must note that copy of Deed of Compromise dated 25/2/2014 is also filed in the court. Learned counsel for the parties have confirmed that the matter is settled.

We are informed that out of two years imprisonment the appellant has undergone six months imprisonment. Offence under Section 420 of the IPC is compoundable with the permission of the court by the person who is cheated. Since the parties are related to each other and they have decided to accord a quietus to their disputes and live peacefully, we permit them to compound the offence. Hence, the offence under Section 420 of the IPC for which the appellant was convicted is compounded because it is compoundable with the permission of the court. The appellant is acquitted of the said charge.”

Similarly, the Hon'ble Supreme Court in paras 3 and 4 of its judgment in **Khaja Nayeemuddein's case** (supra), held as under: -

“During the pendency of the Special Leave Petition, appellant had come to terms with the victim of the accident (PW.2) and thereupon a petition has been filed for permission of the Court to compound the offence. We issued notice to PW.2 Mohd. Ezaz. Today, Mr. Abhijit Sen Gupta entered appearance for him and

submitted that as a matter of fact the appellant and PS.2 have come to terms regarding the offence and so permission is sought for compounding it.

Section 336 of the Indian Penal Code is a compoundable offence with the permission of the Court as can be seen from the second table given to Section 320 of the Code of Criminal Procedure. Considering the fact that the appellant is an employee attached to Andhra Pradesh Road Transport Corporation and the consequences of the conviction will be detrimental to his career, we persuade ourselves to accord permission for compounding the offence. In the result, we set aside the conviction and sentence passed on him and acquit him under Section 320 (8) of the Code of Criminal Procedure.”

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court of India in **Narinder Singh and others Vs. State of Punjab and another, 2014 (6) SCC 455** as well as a Division Bench judgment of this Court in **Sube Singh and another Vs. State of Haryana and another, 2013 (4) RCR (CrI.) 102.**

The material fact regarding compromise (Annexure P-1) has been duly verified by learned counsel for respondent No.2-complainant, who stated that the complainant had received the total agreed amount from the petitioner, to the tune of Rs.6 lacs and nothing remains outstanding against the petitioner, in this regard. He further submits that he has the instructions to say that the complainant has no objection in case the impugned judgments of conviction are set aside, by allowing the present revision petition.

Learned counsel for the petitioner submits that the parties have decided to bury the hatchet and are living peacefully. Learned counsel for the petitioner further submits that continuation of the impugned FIR and subsequent criminal proceedings arising therefrom, including judgments of conviction, are liable to be quashed in the interest of justice.

Learned counsel for respondent No.2 also fairly states that parties have entered into compromise and he has got no objection if the impugned FIR with consequential proceedings arising therefrom, including judgments of conviction, are ordered to be quashed.

Learned counsel for the petitioner as well as learned counsel for the State are ad idem that the petitioner is not proclaimed offender.

Having heard the learned counsel for the parties at some length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the parties have arrived at an amicable settlement, though after conviction, present petition deserves to be accepted. It is so said because in view of the judgment of the Hon'ble Supreme Court in Deva Ram's case (supra), offence under Section 420 IPC was held compoundable but with the permission of the Court, even after conviction.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be allowed. Impugned judgment of conviction dated 25.11.2013 passed by learned Judicial Magistrate 1st Class, Chandigarh and also the impugned judgment dated 14.05.2015 passed by learned Additional Sessions Judge, Chandigarh, are

hereby set aside. Petitioner is acquitted of the charges framed against him. His bail bonds/surety bonds shall stand discharged.

With the abovesaid observations made and directions issued, instant criminal revision petition is allowed, however, with no orders as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

06.07.2015
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