

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2253 of 2014 (O&M)
Date of Decision:03.07.2015

RAJENDER NATH BERRY @ VAIRI

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

Present: Mr. R.S. Mamli, Advocate,
for the petitioner.

Mr. Pradeep Parkash Chahar, DAG, Haryana.

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?*

RAJ MOHAN SINGH, J.

1) Petitioner is in revision against the judgment dated 14.07.2014 passed by Additional Sessions Judge, Kurukshetra vide which his appeal was partly accepted. His conviction under Section 420 IPC was maintained, however, conviction and sentence under Section 406 IPC was set aside.

2) Trial Court convicted the petitioner and sentenced him to undergo simple imprisonment for two years and to pay fine of Rs.1,000/- under Section 420 IPC and in the event of default in payment of fine, further to undergo simple imprisonment for three months and sentenced him to undergo sentence of two years and fine of Rs.1,000/- under Section 406 IPC and in the event of default, further to undergo simple imprisonment for three months.

3) The prosecution story started with the allegations that complainant-Chand Ram moved a complaint before Superintendent of Police, Kurukshetra with the allegations that complainant has two sons namely Manjit Singh and Raj Rishi, one Kaka was friend of Raj Rishi who was running STD shop in Jyoti Nagar, Kurukshetra. Kaka informed Raj Rishi that if he intends to go abroad then he can introduce him with an agent. One person namely Anil Kumar was also sitting in the shop. In October, Kaka along with Anil came to the house of the complainant where his wife and sons were present. Kaka and Anil assured the complainant family that they will send Manjit Singh to Mexico. Anil Kumar told them that he will again come to the house of the complainant after 15-20 days along with Sandeep and Atul Kumar, residents of Delhi. Deal was struck for a sum of Rs.5 lacs. On 15.11.2000 at about 02:00/03:00 p.m., Anil along with Sandeep Kumar and Atul Kumar came to the house of the complainant along with their father. The complainant could arrange only Rs.3 lacs and accordingly the same amount was paid to Anil. After sometime, son of the complainant made telephonic call to the complainant and stated that they have been cheated. Son of the complainant came back from Delhi because accused did not arrange immigration and after visit to one Hussain, complainant along with Hussain, Sardarji and his gunman went to the house of Atul and on raising demand, father

of the accused flatly refused to return the amount and threatened the complainant party with dire consequences. Thereafter, complainant paid Rs.1,05,000/- to Mr. Hussain for immigration of his son to abroad i.e. America. Mr. Hussain dropped his son on the way and thereafter, complainant and his wife again visited Sandeep Kumar, Atul Kumar and father of the accused and demanded their amount back. Accused refused to return the amount. With this background, complainant sought action against the accused persons.

4) Learned counsel for the petitioner contends that in view of acquittal of the appellant under Section 406 IPC by the Additional Sessions Judge, Kurukshetra, offence under Section 420 IPC does not survive and its ingredients are not attracted. Learned counsel contends that the police did not arrest the main accused, where petitioner was made a scapegoat. Hussain, Sardarji and gunman were never associated in the investigation. Petitioner is found to have no connectivity with the alleged crime particularly when Anil, Atul and Sandeep have been declared proclaimed offenders. Learned counsel further contends that amount has already been paid to the complainant in view of compromise.

5) This Court vide order dated 28.08.2014 suspended the sentence of the petitioner and in order dated 14.07.2014 passed by the Additional Sessions Judge, observed that during pendency

of bail application, petitioner had paid the entire disputed amount to the complainant. In view of aforesaid, learned counsel restricted his prayer only to the quantum of sentence. Directions were issued to learned State counsel to verify whether petitioner had paid the entire amount to the complainant before trial Court or not?

6) Matter was again taken up in due course on 09.10.2014 and this Court passed the following order:-

“Learned counsel for the State has informed that the petitioner had approached this Court by way of Crl. Misc. No. 41176- M of 2004 and was granted regular bail subject to deposit of Rs.1.56 Lacs. Four demand drafts totaling a sum of Rs.1.56 Lacs were deposited in this Court in the year 2004.

At this stage, notice is being issued to the counsel for the petitioner so that he can get the drafts renewed and the payments be released to the complainant.

Adjourned to 2.12.2014.”

7) Again on 19.12.2014, this Court passed the following order:-

“Petitioner is directed to be present in the Court on the next date of hearing.

Adjourned to 06.01.2015.

The Registry of this Court is directed give complete information, as to 'whether the amount, deposited by the petitioner by way of drafts, has been withdrawn or not.'”

8) On 14.01.2015, the Registry of this Court submitted its report that original drafts deposited by the petitioner pursuant to the order passed by this Court while granting bail, are in safe custody and have not been withdrawn so far. Registry was directed to return the drafts to the learned counsel for the petitioner for their revalidation.

9) Thereafter, vide order dated 04.05.2015, case was adjourned for 15.05.2015 and learned counsel for the petitioner was directed to implead the complainant. Four drafts bearing No.610233, 610234, 610235 have been received on record after revalidation on 20.04.2015 and on 10.04.2015 in respect of draft No.85562. The total amount involved in these drafts is Rs.1,56,000/-. These drafts are in favour of Registrar, Punjab and Haryana High Court and are attached with the record of this case. However, complainant has not been impleaded.

10) I have considered the material on record as well as submissions made by both the Ld. counsel. Additional Sessions Judge in his judgment has observed that in Criminal Misc. No.41176-M-2004, the petitioner had deposited an amount of Rs.1,56,000/- with the Registry of the Hon'ble High Court. Thereafter, Additional Sessions Judge proceeded to record findings in para No.22 of the judgment in the following manner:-

“What has been discussed above clearly proves that after registration of FIR, with the

intervention of the counsel, a compromise was got effected between the parties. Accused persons had admitted their liability and they had agreed to return a sum of Rs. 2,80,000/- to the complainant. These facts when considered with the evidence led on the file make this Court to reach only and only one conclusion that money was given by PW Chand Ram to accused persons on 15.11.2000 as consideration for sending his son abroad but accused persons did nothing and in this manner, duped him. Evidence on record shows that from the very beginning, intention of accused was malafide. They in fact were never intending to send the son of complainant abroad and they were only interested in usurping the money of the complainant. Thus, present is a clear cut case of cheating and Ld. Trial Court did well in convicting and sentencing the accused for the commission of offence under Section 420 IPC. Hence, upon consideration upon the matter, I am not able to find any error in the well considered judgment of Ld. Trial Court in so far as it relates to conviction of accused for offence under Section 420 IPC.”

11) Since the amount was deposited in the Registry of this Court in Criminal Misc. M-1166-M-2004, i.e. petition for the grant of regular bail on behalf of the petitioner, the said amount remained pending in the Registry of this Court without onward payment to the complainant. Taking into consideration the totality of facts and circumstances of this case, particularly in view of order dated 28.08.2004 wherein learned counsel for the petitioner

confined his prayer, this Court thinks just and expedient to reduce the sentence of the petitioner for a period he has already undergone, subject to valid payment of an amount of Rs.1,56,000/- as deposited and revalidated by the petitioner. Even in the absence of impleading the complainant on record, his right to receive the amount of Rs.1,56,000/- can be safeguarded by order immediate encashment of drafts by the Registrar of this Court in order to prevent further expiry of validity period. The amount so encashed be deposited in the bank till its withdrawal by the complainant by moving proper application after his due service and intimation by this Court.

12) With these observations, petition is disposed of, reducing the sentence of the petitioner for the period he has already undergone.

13) Disposed of with the aforesaid rider that the amount under drafts be got encashed by the Registrar of this Court and be deposited in the bank till withdrawal by the complainant after his service by moving proper application. Necessary intimation/notice be issued to the complainant forthwith.

(RAJ MOHAN SINGH)
JUDGE

July 03, 2015
SwarnjitS