IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRR-635-2007.
Date of Decision: 28.09.2016.

GURBAJ SINGH ....PETITIONER.

VERSUS

STATE OF PUNJAB ....RESPONDENT.

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CORAM : HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. A.D.S. Sukhija, Advocate for the petitioner.

Mr. Surjeet Singh Chaudhary, Deputy Advocate General, Punjab.

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SNEH PRASHAR, J.

This revision was directed against the judgment dated 27.02.2007 recorded by learned Additional Sessions Judge, Mansa in Criminal Appeal No.26 of 30.09.2006 whereby the appeal filed by the petitioner assailing the judgment of conviction and order of sentence dated 15.09.2006 passed by learned Judicial Magistrate Ist Class, Mansa, in Police Challan No.27 of 19.03.2005 based on First Information Report No.47 dated 18.06.1998 registered at Police Station Boha, was dismissed.

A written complaint was given by Lance Nayak Gurmeet Singh son of Joginder Singh, resident of Saidewala to the Superintendent of Police, Mansa (Ex.PB) wherein it was stated by him that he was serving in Indian Army for the last about 14 years and in the beginning of 1996 had come to his village Saidewala on annual leave. During that period, his

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brother-in-law (wife's brother) named Jasbir Singh asked him for a sum of Rs.80,000/- on the pretext that the amount was required for securing a job of driver in the Health Department. He left a sum of Rs.80,000/- at his house before returning to his Unit after availing the annual leave. Later on, he came to know that Gurbaj Singh son of Darbara Singh, resident of village Kuharia (petitioner), claiming himself to be National Joint Secretary of All India Scheduled Caste Yuvjan Samaj, had taken Rs.80,000/- from Jasbir Singh on the false assurance of getting him appointed as a 'driver' in Health Department and had executed a receipt to the said effect. However, Gurbaj Singh neither secured a job for Jasbir Singh nor returned the money taken by him.

An enquiry was conducted by Superintendent of Police (HQ), Mansa into the allegations of the complainant and a detailed report dated 16.04.1998 (Ex.PW8/A) was submitted. A formal First Information Report was recorded and a case under Section 420 of the Indian Penal Code (for short, “IPC”) was registered. The petitioner was arrested. Necessary documents were taken into possession and on completion of other formalities, a final report as envisaged under Section 173(2) of the Code of Criminal Procedure (for short, “Cr.P.C.”) was presented before the Area Magistrate.

The petitioner was charge-sheeted and subjected to face trial for commission of offence under Section 420 IPC.

To substantiate the charge, the prosecution examined as many as seven witnesses namely, PW1 Ranjit Kaur, PW2 Sukha Singh, PW3 complainant Gurmeet Singh, PW4 Jasvir Singh, PW5 Jangir Singh, PW6 ASI Santosh Singh and PW7 Sub Inspector Balwant Singh.

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After closure of evidence of the prosecution, in his statement recorded under Section 313 Cr.P.C., the petitioner denied the case of the prosecution and pleaded innocence and false implication due to a property dispute.

In his defence evidence, the petitioner examined DW1 Piara Singh and DW2 Om Parkash.

Analyzing the evidence available on record and the submissions made by learned Additional Public Prosecutor and learned counsel representing the petitioner, learned trial Court held guilty, convicted and sentenced the petitioner to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine to further undergo R.I. for one month.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 15.09.2006 passed by learned trial Court, the petitioner preferred an appeal which was dismissed by learned Additional Sessions Judge, Mansa vide judgment dated 27.02.2007.

Still dissatisfied, the petitioner preferred the instant revision petition.

The submissions made by Mr. A.D.S. Sukhija, learned counsel representing the petitioner and Mr. Surjeet Singh Chaudhary, learned Deputy Advocate General for the State of Punjab have been heard and record perused.

At the very outset, learned counsel for the petitioner argued that to substantiate its allegation that Jasbir Singh had given Rs.80,000/- to the petitioner for securing job of a driver in the Health Department, the prosecution had mainly relied upon a receipt Ex.PA which accompanied the

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complaint Ex.PB given by complainant Gurmeet Singh to Superintendent of Police, Mansa. At the very initial stage of controversy, the petitioner had denied the story of the prosecution being false and improbable. He neither admitted receipt of amount of Rs.80,000/- nor admitted execution of the receipt Ex.PA. The document having been denied by the petitioner should have been proved by the prosecution in due process of law before it could be relied upon. Although the specimen signatures of the petitioner were taken by the police during investigation but no attempt was made to get the admitted signatures compared with the disputed signatures on receipt Ex.PA to establish execution of receipt by the petitioner. When it could not be proved that the disputed signatures on the receipt were of the petitioner, the prosecution could derive no benefit from the said document. The ocular evidence adduced by the prosecution suffers from such glaring inconsistencies that the falsity in the said evidence stands exposed.

Learned counsel pointed out that on one hand PW1 during her examination-in-chief stated that on payment of Rs.80,000/- by her brother Jasbir Singh to petitioner Gurbaj Singh, the latter had executed receipt Ex.PA in their presence. Controverting her own version during cross-examination she outrightly stated that the receipt Ex.PA was not executed/ signed in her presence. PW2 Sukha Singh deposed that the receipt Ex.PA was executed and signed by the petitioner at his office in Budhlada on the day Jasbir Singh had paid him the amount of Rs.80,000/- at the house of complainant Gurmeet Singh. But it was not so stated by him in his statement recorded by the police during investigation under Section 161 Cr.P.C. The sequence, in which he mentioned in his statement that the receipt of payment of money was executed, indicates that it was executed and signed

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at the place where the money was paid. PW3 Gurmeet Singh, complainant, was neither a witness to the receipt Ex.PA nor was a witness to alleged payment of money to the petitioner by Jasbir Singh. Lastly, PW4 Jasbir Singh though stated about execution of receipt in lieu of the money paid by him, but during cross-examination he stated that he had received the receipt after two years that too from his brother-in-law (sister's husband). He did not state the time or place where the receipt was executed.

Learned counsel asserted that when due to the discrepancies/ variations in the ocular evidence of the prosecution, the very existence and execution of receipt Ex.PA was doubtful, there remained no substantive and reliable evidence to establish the payment of Rs.80,000/- by PW4 Jasbir Singh to the petitioner. Otherwise also, PW4 Jasbir Singh admitted that he had not given any application for job to any department. He also admitted that Gurbaj Singh is not a government employee and can also not provide job to any person. The complainant also had no knowledge as to where the application was to be submitted for getting a job in hospital or that who was competent to provide a job. He never enquired the said facts from any source. In such circumstances, it does not appear to be plausible that they could have paid such huge amount of Rs.80,000/- to the petitioner for securing a government job. The actual controversy between the parties was that the complainant and his brother Sukha Singh wanted to grab the property of Piara Singh, their maternal uncle, who had no issue, but Piara Singh gave his property to the petitioner and offended by that the complainant and his brother falsely implicated the petitioner in the present case.

The information with complainant Gurmeet Singh and the facts

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stated by him in his written complaint were based on what he had heard from his family members, therefore, his statement being hearsay was not required to be looked into when direct evidence for proving the allegation was available. The complainant intended to put the legal agency into motion so that action could be initiated against the offender who had cheated his family members.

Indeed, the receipt Ex.PA, executed and signed by the petitioner, is the document relied upon by the prosecution in addition to the ocular evidence of the witnesses to prove that the petitioner promising to procure a job of a driver for PW4 Jasbir Singh in Health Department of the State of Punjab had taken an amount of Rs.80,000/- from PW4 Jasbir Singh in the presence of PW2 Sukha Singh who had appended his signatures on the receipt as an attesting witness. PW1 Ranjit Kaur, wife of complainant Gurmeet Singh, was a witness to the payment of amount by Jasbir Singh to the petitioner and during her statement she fairly admitted that the writing Ex.PA was not scribed in her presence. For that reason, she also expressed ignorance as to who prepared the receipt and who all appended signatures or affixed thumb impression on the receipt.

However, the deposition of PW2 Sukha Singh is very categoric and firm on all material aspects surrounding execution of the receipt Ex.PA. He deposed that the amount of Rs.80,000/- was handed over by Jasbir Singh to the petitioner in the presence of PW1 and in the presence of Ranjit Kaur at the house of the latter (Ranjit Kaur). Thereafter, the petitioner took them to Budhlada where he got typed the receipt Ex.PA, on his own letter pad and in his presence, he appended his signatures on the receipt and also affixed his stamp on the same. He testified that he too had signed the receipt Ex.PA,

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as an attesting witness and proved his signatures on the said document. It was further stated by him that he can identify the signatures of petitioner Gurbaj Singh because he was a worker of Congress Party with him and he had seen him reading, writing and appending signatures.

The complainant party is closely related to the petitioner. PW2 Sukha Singh is the brother-in-law of complainant PW3 Gurmeet Singh and petitioner Gurbaj Singh admittedly is son of their maternal uncle. Jasbir Singh is brother of Ranjit Kaur wife of complainant Gurmeet Singh. PW2 Sukha Singh was not directly related to Jasbir Singh. He was related through his brother complainant Gurmeet Singh whereas petitioner Gurbaj Singh was his first cousin. Since PW2 Sukha Singh and petitioner Gurbaj Singh were closely related, their appears no reason to doubt the version of PW2 Sukha Singh that he had seen the petitioner reading, writing and appending signatures. Moreso, their being close relationship, PW2 Sukha Singh or even the complainant would not have falsely deposed against the petitioner and would not have supported the version of Jasbir Singh. PW2 Sukha Singh was cross examined at length by the petitioner, but nothing such could be derived from him which could cause a dent in his veracity or credibility. By virtue of testimony of PW2 Sukha Singh, the receipt Ex.PA stands duly proved.

The petitioner may have challenged the deposition of the prosecution witnesses by cross examining them on the facts deposed by them, but he did not deny his signatures on the receipt Ex.PA during statement of either of the witnesses. No suggestion either denying the signatures or execution of the receipt Ex.PA was put to any of the prosecution witnesses. It was also not denied that the letter pad, on which

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the receipt Ex.PA was prepared and the stamp affixed on the receipt, did not belong to the petitioner. The facts being so, it does not lie in the mouth of the petitioner to say that the receipt Ex.PA was not duly proved by the prosecution.

Admittedly, the petitioner was not authorized to extend a promise or undertaking as had been referred to in receipt Ex.PA. Nothing was produced to prove that he had any authority to invite any application or to hold the process of selection for appointment of any person as a driver in the Government Department. Undoubtedly, the transaction in which he entered was illegal. The petitioner extended a promise and offered to secure a job for Jasbir Singh upon which he had no authority or right, therefore, it can be said without two thoughts that he committed mischief as envisaged under Section 420 IPC. It was for the false assurance given by the petitioner that complainant PW3 Gurmeet Singh and PW4 Jasbir Singh parted with the amount of Rs.80,000/- and paid the same to him. Thus, the judgment of conviction and order of sentence dated 15.09.2006 recorded by learned trial Court and the judgment dated 27.02.2007 passed by learned appellate Court are upheld.

In the above premise, there being no merit in the petition, it is dismissed. The petitioner is on bail in this case, his bail bonds shall stand cancelled. The concerned Chief Judicial Magistrate, shall get the convict arrested and commit him to prison for serving the remaining period of sentence and shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 Cr.P.C., and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

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The Registry shall keep track of the submission of compliance report and put up the papers, whether the reports are received or not within the time frame, immediately after the expiry thereof.

(SNEH PRASHAR)
JUDGE

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Whether speaking/ reasoned : **Yes**

Whether Reportable : **Yes**

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