

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.2436 of 2013 (O&M)
Decided on:-March 03, 2016.

Kuldip Singh.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. Aditya Dassans, Advocate for
Mr. C.L. Verma, Advocate
for the petitioner.

HARI PAL VERMA, J.

CRM-35396-2013

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 206 days in filing the present petition.

Learned counsel for the applicant-petitioner contends that learned Sessions Judge, S.B.S. Nagar dismissed the appeal on 3.8.2012 and certified copy of the same was applied on 7.8.2012, which was prepared on

9.8.2012 and delivered on 17.8.2012. However, clerk of the counsel did not communicate the same to the petitioner and it is only on 17.10.2012, when the applicant-petitioner visited the office of his counsel at S.B.S. Nagar, he came to know that certified copy of the judgment dated 3.8.2012 has already been got by the clerk of counsel for the applicant. In this manner, the present petition was filed on 20.10.2012 without waiting for further time.

He further submits that thereafter, Registry raised certain objections and to comply with the same, delay has occurred.

Heard.

Admittedly, the appeal filed by the applicant-petitioner was dismissed on 3.8.2012 by learned Sessions Judge, S.B.S. Nagar and thereafter, the present petition was filed on 20.10.2012. In this manner, the delay in original filing of the present petition is not inordinate. It is only to remove certain objections, further delay has been caused. Therefore, this Court finds that delay in filing the present petition deserves to be condoned.

As such, the present application is allowed and delay of 206 days in filing the present petition is condoned.

Main Case

The petitioner has filed present revision petition impugning the judgment dated 3.8.2012 passed by learned Sessions Judge, S.B.S. Nagar whereby his appeal against the judgment dated 20.8.2011 passed by learned Judicial Magistrate 1st Class, S.B.S. Nagar, was dismissed.

Vide judgment dated 20.8.2011, learned Magistrate had acquitted respondents No.2 and 3, namely, Sohan Lal and Kanta of the charges framed against them in a case FIR No.69 dated 15.4.2002 under Sections 406 and 420 IPC registered at Police Station Banga.

Briefly stated, the petitioner lodged the aforesaid FIR alleging therein that on 24.1.2002, accused Mohan Lal (declared as proclaimed offender) had dishonestly induced him to part with an amount of Rs.8.5 lacs along with his passport. The accused had represented that he will send the complainant-petitioner to America, whereas the accused neither sent him to America nor returned his money and thereby, cheated him.

On investigation, initially Challan was presented only against accused Mohan Lal, who was declared as proclaimed offender, whereas accused-respondents No.2 and 3 herein were kept in Column No.2. It is thereafter on an application filed on behalf of the prosecution under Section 319 Cr.PC, learned Magistrate ordered summoning of accused-respondents No.2 and 3 vide order dated 9.7.2004.

On submission of Challan, copies of necessary documents as provided under Section 207 Cr.PC were supplied to the accused-respondents No.2 and 3 free of costs and they were charge-sheeted for commission of offence under Section 420 IPC.

The prosecuted examined PW1-Kuldip Singh, PW2-Sarwan Ram, PW3-Kulwinder Singh, PW4-Kuldeep Singh, PW5-Jagdish Ram,

retired ASI and PW6-Inspector Varinder Jit Singh. Thereafter, statements of accused under Section 313 Cr.PC were recorded and in their defence, they examined DW1-Harwinder Pal Singh Bains, retired SP(D). However, vide judgment dated 20.8.2011 learned trial Court acquitted both the accused of the charge framed against them. The trial Court has observed that even the complainant, petitioner herein, while appearing in the witness box as PW1 has deposed in his examination-in-chief that he submitted a complaint against accused Mohan Lal son of Gurditta Mal, Nirmala Devi wife of Mohan Lal, Jumny son of Mohan Lal, Kanta daughter of Gurditta Mal, resident of Mohalla Thanedaran, Mehli Gata, Phagwara and his brother Sohan Singh son of Gurditta Mal, resident of Hoshiarpur. The complainant also alleged that he settled the matter with accused Mohan Lal for an amount of Rs.6.5 lacs and he had gone to the house of accused Mohan Lal with his passport. At that time, Mohan Lal was not present at his house, but his sister Chander Kanta, respondent No.3 herein, was present and he had given Rs.50,000/- and the passport to her. In February, 1994, accused Mohan Lal along with his brother Sohan Lal came to his house at village Khankhana and remaining amount of Rs.6 lacs was paid to both these brothers. At that time, Sarwan Ram son of Nama Ram was also present.

The complainant-petitioner further alleged that he asked accused Mohan Lal several times to send him to America, but neither he sent the complainant to America nor returned the money to him. It was only in

the month of September, 1999 that the complainant asked for return of his passport and money, then accused Mohan Lal told that he would send his son Balraj Singh and nephew Kulwinder Singh to Italy and said amount would be adjusted.

Learned trial Court found that the prosecution has failed to establish any allurement given by the accused to send the complainant abroad. There was no evidence that money was ever demanded by accused-respondents No.2 and 3 so as to send the complainant abroad. In this manner, story of the prosecution was doubted by the trial Court and accused-respondents No.2 and 3 were acquitted of the charge levelled against them vide judgment dated 20.8.2011. However, the file was ordered to be consigned to the record room with a direction that the same would be put up again as and when accused Mohan Lal surrenders in the Court or is arrested and produced in the Court.

The petitioner thereafter filed an appeal before learned Sessions Judge, S.B.S. Nagar, but the same was also dismissed vide judgment dated 3.8.2012 by observing as under:

“12. In case we go through the evidence brought on the record, there is statement of Kuldip Singh, he in his statement has stated that matter was settled with Mohan Lal for a sum of Rs.6,50,000/- and he had paid Rs.50,000/-, passport and photographs in January 1994, but on that day Mohan Lal was not present in the house and he had paid this amount to

Chander Kanta sister of Mohan Lal and in February 1994, Mohan Lal and Sohan Lal came to his house and took Rs.6 lacs. When he could not go to USA Rs.1,00,000/- each for sending Balraj Singh and Kulwinder Singh to Italy. In this way, the total amount comes to Rs.8,50,000/-. In the cross-examination, he has admitted that Mohan Lal had sent him to Thailand in the year 1981 and he had paid the amount to Mohan Lal to send to USA. So far as PW-2 Sarwan Singh is concerned, he in his cross-examination has stated that he does not know Mohan Lal and others. Therefore, his statement is not supporting the prosecution, whether any amount was paid to accused facing trial in his presence and PW Kulwinder Singh also says that in the year 1999 he paid Rs.1 lac each for sending him and Balraj Singh to Italy. Otherwise witnesses are the official witnesses. Therefore, evidence on the record is that assurance was given by Mohan Lal and he is working as a travel agent. The respondents have been cited as an accused being related to Mohan Lal. It has been alleged that Rs.50,000/- was paid to Chander Kanta in January 1994 on the plea that on that day Mohan Lal was not present in the house. Therefore, in case she has received any amount, the same has been received on behalf of Mohan Lal. The learned trial Court in the judgment has rightly observed that under Section 420 of the IPC, dishonest inducement is must and there is no dishonest inducement on the part of respondents to send him to USA, or any other country and that they should part away with their money. Therefore, certainly, the case of the appellant/complainant does not cover under Section 420 of the IPC on account of lack of any inducement on the part of the

respondent. Therefore, the findings of the learned lower court that the respondents No.2 and 3 have not committed any offence under Section 420 of the IPC, are justified and counsel for the appellant has not been able to convince before this Court how the respondents No.2 and 3 have committed the offence punishable under Section 420 of the IPC. Therefore, the findings of the learned lower court are correct findings and this Court does not see any reason to call for any interference in the same. Therefore, this Court is of the opinion that findings of the learned trial court are based upon proper appreciation of evidence on the record and the same are hereby affirmed.”

Learned counsel for the petitioner has contended that since accused Mohan Lal is a proclaimed offender and initial money with passport was handed over to his sister Kanta i.e. respondent No.3, who received the same on behalf of accused Mohan Lal, it is a fit case for her conviction. Respondent No.2 Sohan Lal has come to the house of the complainant-petitioner along with his brother accused Mohan Lal and, therefore, he is also guilty of committing the offence for which he has been charged. He has further contended that once it is established that respondents No.2 and 3 accepted money even on behalf of accused Mohan Lal, they were not entitled to acquittal of the charge framed against them.

I have heard learned counsel for the petitioner and perused the paper book.

Admittedly, during investigation, no incriminating evidence has

come against respondents No.2 and 3 and, therefore, they were kept in Column No.2. It is only when the application under Section 319 Cr.PC was filed, they were summoned to face trial.

Perusal of the record reveals that respondents No.2 and 3 cannot be held guilty for offence under Section 420 IPC as whatever the alleged dealing had taken place, that was between the petitioner and accused Mohan Lal, who has since been declared as proclaimed offender. The mere allegation that a sum of Rs.50,000/- was paid to respondent No.3, cannot bring out a case within the definition of Section 420 IPC as no *mens rea* is established.

It is the case of the prosecution itself that the deal was finalised between the petitioner and accused Mohan Lal and as such, even if respondent No.3 received money, the same was received on behalf of accused Mohan Lal. Even PW2-Sarwan Ram during his cross-examination has stated that he does not know Mohan Lal and in this manner, has not supported case of the prosecution.

This Court finds that respondents No.2 and 3 have been dragged into this case for the simple reason that they are related to main accused Mohan Lal, who has since been declared as proclaimed offender. Further more, there is concurrent findings of fact recorded by both the Courts below which is based on evidence led by the parties and thus, there is no scope for interference by this Court in its revisionary jurisdiction by re-appreciating

the evidence. In this regard, reference may be made to judgment of Hon'ble Supreme Court in the case of ***Johar and others Versus M/s Mangal Prasad and another 2008(3) SCC 423***, wherein while dealing with the scope of interference by High Court in the revisional jurisdiction, the Apex Court has observed as under:

“17. The approach of the High Court to the entire case cannot be appreciated. The High Court should have kept in mind that while exercising its revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure, it exercises a limited power. Its jurisdiction to entertain a revision application, although is not barred, but severally restricted, particularly when it arises from a judgment of acquittal.”

In view of the above, this Court finds no reason to interfere with the impugned judgments passed by the Courts below. As such, affirming the same, the instant petition, being devoid of any merit, is dismissed.

March 03, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE