

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

**CRR-2382 of 2015 (O&M).
Date of Decision: 28.01.2016.**

SATISH KUMAR

....PETITIONER.

VERSUS

STATE OF PUNJAB

....RESPONDENT.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Argued by: Mr. Gaurav Chopra, Advocate for the petitioner.

Mrs. Lavnya Paul, Assistant Advocate General, Punjab.

Mr. S.K. Arora, Advocate for the complainant.

SNEH PRASHAR, J.

This petition was preferred by petitioner Satish Kumar assailing the judgment of conviction and order of sentence dated 07.03.2014 recorded by learned Chief Judicial Magistrate, Fazilka, in case bearing First Information Report No.54 dated 14.06.2004 under Sections 420/465/468/471/120-B of the Indian Penal Code (for short "I.P.C.") registered at Police Station City Fazilka, vide which he (petitioner) was held guilty, convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.3000/- for the offence under Section 420 I.P.C. and in default of payment of fine, to further undergo simple imprisonment for 30 days.

The facts, as they emerge from the record, are that on 23.03.2004 Dalip Singh son of Fauja Singh, resident of Chak Mohamadwala, Police Station Sadar Jalalabad gave a written complaint to Deputy Superintendent of Police Fazilka stating therein to take action against the persons who had prepared forged papers and cheated him. His allegation was that his son Surinder Singh aged 23/24 years and a student of 12th class wanted to go abroad for work. He alongwith Swaran Singh son of Bhag Singh, resident of Dhandi Kadeem, Tehsil Jalalabad met Satish Kumar son of Shiv Dayal (petitioner) at his house as he was known to them. There they also met Satnam Singh, a travel agent resident of Jhansa, Tehsil Kurkshetar who was known to Satish Kumar. Satnam Singh told him (complainant) that Baldev Sharma, resident of Pehwa and Jaswinder Singh son of Puran Singh and his father Puran Singh son of Uttam Singh, resident of Randhawa, Tehsil Dasua, District Hoshiarpur were engaged in the business of sending young boys to foreign countries because Balraj Kaur, daughter of Puran Singh and Mohan Singh Sodhi son of Arjan Singh, resident of Kishanpura, District Nawanshaher were already settled in Tanjaneya. Satnam Singh assured that he will manage to send his (petitioner's) son Surinder Singh to Tanjaneya and from there Balraj Kaur and Mohan Singh will arrange for sending him to England. They will also arrange for getting him work permit for two years with which he will start earning Rs.50,000-60,000/- per month.

Satnam Singh asked him (complainant) to look for some more boys who wanted to go abroad so that they all could be sent in a

group. He demanded Rs.9 lacs for sending his son to England and Rs.5 lacs for Italy. An initial amount of Rs.3 lacs for England and Rs.2 lacs for Italy was to be paid and the remaining payment was to be given after reaching the foreign country. The complainant stated that he arranged Rs.3 lacs by mortgaging his land on 05.09.2003 and on 07.09.2003 he alongwith his son came to the house of Satish Kumar and gave Rs.3 lacs and the passport of his son to Satnam Singh who further handed over the same to Jaswinder Singh son of Puran Singh who too alongwith his father Puran Singh was present at the house of Satish Kumar. The other boys also gave the money and their passports to Satnam Singh, Jaswinder Singh and Puran Singh as per the terms and conditions agreed between them. Satnam Singh assured to get visa for his son Surinder Singh and asked him for Rs.1,25,000/- for purchase of air ticket. On 06.10.2003, at the house of Satish Kumar, where Jaswinder Singh, Puran Singh and a person named Nayyar (Madras) were present, the amount of ticket was given.

It was further mentioned in the complaint that as told by Satnam Singh, Surinder and Manoj were sent to Tanjaneya from where his son Surinder gave him a telephonic call and told him that he was with Mohan Singh Sodhi and Balraj Kaur and asked him to arrange the balance amount so that they could go to England. An amount of Rs.3.5 lacs was paid to Satnam Singh in the presence of Satish Kumar, Baldev Sharma and two other persons sitting at his house. He assured that the amount will be paid to Puran Singh and others. He was asked to arrange for the

balance amount. After about 5-6 days, he came to know that all the said persons formed a gang of cheaters. His son and his friends had been detained for possessing a forged viza and they all had been sent back to India.

On the above statement of complainant Dalip Singh (PW1), First Information Report No.54 dated 14.06.2004 under Sections 420/465/468/471/120-B of I.P.C. was registered against the petitioner at Police Station City Fazilka. During investigation, the petitioner was arrested and on completion of investigation and other formalities was sent to the Court for trial.

The petitioner was charge-sheeted under Sections 420/465/468/471 I.P.C., to which he pleaded not guilty and claimed trial.

The prosecution examined PW1 Dalip Singh, PW2 Surinder Singh, PW3 Lakhwinder Singh, PW4 Darshan Lal, PW5 Veer Chand, PW6 Ramji and PW7 Manoj Kumar.

After closure of evidence of the prosecution, statement of petitioner under Section 313 of the Code of Criminal Procedure (for short "Cr.P.C.") was recorded by putting to him the incriminating evidence available on record, which he denied and pleaded false implication.

In his defence evidence, the petitioner examined DW1 Head Constable Ranjit Singh.

Analyzing the evidence available on record and the submissions made by learned Public Prosecutor and learned counsel representing the petitioner, learned trial Court convicted and sentenced

him as indicated above.

Feeling aggrieved by the impugned judgment of conviction and order of sentence dated 07.03.2014 passed by learned trial court, the petitioner preferred an appeal which was dismissed by learned Additional Sessions Judge, Fazilka vide judgment dated 05.06.2015.

Still unsatisfied, the petitioner has preferred the instant criminal revision.

The submissions made by Mr. Gaurav Chopra, learned counsel representing the petitioner, Ms. Lavnya Paul, Assistant Advocate General representing the State of Punjab and Mr. S.K. Arora, learned counsel representing the complainant have been heard and record has been perused.

At the very outset, learned counsel for the petitioner argued that the evidence led by the prosecution is incompetent and insufficient to indicate any involvement of the petitioner in the occurrence during which complainant Dalip Singh and his son Surinder Singh were alleged to have paid huge amount to a travel agent and his companions for sending Surinder Singh to England and had been cheated by them. It was neither the allegation of the complainant in the First Information Report nor he uttered a word when his deposition in the Court was recorded to show that there was any inducement, promise or demand of money by the petitioner. The mere allegation that the money was demanded or paid at the house of the petitioner or in his presence would not remotely prove that he was in conspiracy with the persons who had demanded or taken the money for

sending the son of the complainant to a foreign country.

Referring to the statement of PW5 Veer Chand, Deputy Superintendent of Police, Balluana and PW6 Retd. Inspector Ramji, learned counsel pointed out that both the said witnesses categorically stated that it had come in investigation/inquiry that Satish Kumar (petitioner) had not obtained any money from any person. PW5 D.S.P. Veer Chand specifically mentioned that during the inquiry held by him, he found that Satish Kumar had also been cheated to the tune of Rs.70,000/- on the assurance that he will be sent abroad. He proved his inquiry report Ex.PW5/A and stated that as per his inquiry Satish Kumar had not committed any offence. Learned counsel asserted that misreading and misappreciation of the evidence by learned trial Court and by learned first appellate Court had led to conviction of the petitioner for the offence punishable under Section 420 I.P.C.

Refuting the arguments of learned counsel for the petitioner, learned Assistant Advocate General submitted that even if it was not specifically stated by the complainant in the First Information Report or during his statement recorded in the Court that he had paid any money to petitioner Satish Kumar yet the fact remained that the complainant had met Satnam Singh, the travel agent and the other co-accused whom he paid such huge amount for sending his son abroad, at the house of Satish Kumar. All meetings of the complainant with the said accused were proved to have taken place not only at the house of Satish Kumar but also in his presence and that proves that he too was a member of the gang of

cheaters.

Indeed, in his complaint Ex.P1 which formed the basis of First Information Report, the complainant had stated that as his son Surinder Singh wanted to go abroad for work, he went to the house of Satish Kumar where he met Satnam Singh, travel agent. But certainly, it was not his allegation that the petitioner induced him to meet the travel agent or made any promise/assurance or demanded any money for sending his son abroad. His allegation was that travel agent Satnam Singh told him that Baldev Sharma, Jaswinder Singh and his father Puran Singh were engaged in the business of sending young boys to foreign countries because the daughter of Puran Singh, namely Balraj Kaur and one Mohan Singh Sodhi were already settled in Tanjaneya. Thereafter also, it was not the allegation of the complainant that the petitioner had any role to play in the deal that struck between him and Satnam Singh etc.

Subsequent to that, though the complainant stated that he thrice visited the house of the petitioner during which he paid the demanded money but he nowhere stated that he had ever been called by the petitioner telephonically or otherwise to his house or he had paid any money to the petitioner. It was also not his version that on the asking of the petitioner he had paid the money to Satnam Singh etc.

Learned trial Court as well as learned first appellate Court appear to have been swayed by the fact that the demand for money was raised and the money was paid in the presence of the petitioner. In Para No.15 it was observed by learned trial Court that PW7 Manoj Kumar

deposed that they had paid the amount of Rs.1,25,000/- to Satish Kumar. The statement of PW7 was misread by learned trial Court. Though in his examination in chief PW7 Manoj Kumar stated that he and Surinder Singh handed over Rs.1,25,000/- to Satish Kumar who then took them to Bombay from where they boarded a plane for Tanjaneya, but in his cross-examination deviating from his own statement, he clarified in a crystal clear manner that he handed over Rs.1,25,000/- to Satnam Singh and not to Satish Kumar. He reiterated that he did not pay any money to Satish Kumar. He also further stated that he was taken to Delhi and then to Bombay by Satnam Singh and not by Satish Kumar. Similarly, complainant PW1 Dalip Singh as well as PW2 Surinder Singh did not utter a word to say that there was any inducement, assurance or promise by the petitioner or that they had paid any money to the petitioner. For the simple reason that the money was paid at the house of the petitioner, the imagination cannot be stretched to the extent that the petitioner was involved in the deal or in the act of cheating. Not a single overt act was attributed to the petitioner in the entire occurrence. It was also not stated or proved that the petitioner derived any benefit from transaction.

As far as the presence of the petitioner or the deal of the complainant at the house of the petitioner is concerned, the statement of PW5 D.S.P. Veer Chand proves that probably he too was interested in going abroad but landed as a victim of cheating. PW5 stated that in the inquiry held by him he found that the petitioner (Satish Kumar) had been cheated of Rs.70,000/- taken from him for being sent abroad. He had also

mentioned in his report Ex.PW5/A that as per his inquiry the petitioner had not taken any money from any person and had committed no offence. PW6 Retd. Inspector Ramji also stated that during investigation he found that Satish Kumar had not taken any money from any person.

Thus, the above scrutiny of the evidence of the prosecution leads to the conclusion irresistible that the prosecution had utterly failed to prove its allegation of cheating against the appellant. Accordingly, the criminal revision filed by the petitioner is allowed. The judgment of conviction and order of sentence dated 07.03.2014 passed by learned trial Court and the judgment dated 05.06.2015 passed by learned first appellate Court are set aside qua petitioner Satish Kumar. The petitioner is acquitted of the charge framed against him. He be set at liberty if not required in any other case.

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Since the main petition of the applicant-petitioner has been allowed and he has been acquitted of the charge levelled against him, the instant application for suspension of sentence has become infructuous and is dismissed as such.

(SNEH PRASHAR)
JUDGE

28.01.2016.
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Note: Whether to be referred to the Reporter or not? Yes.