

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2562 of 2015 (O&M)
DECIDED ON: FEBRUARY 29, 2016

SOHAN LAL & ORS

.....PETITIONERS

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH.

- 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?*

Present: Mr. K.B. Raheja, Advocate
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. M.S. Tewatia, Advocate
for respondent No.2.

JASPAL SINGH, J (ORAL)

Challenge in this revision petition is to the judgment of conviction and order of sentence dated October 30, 2013 passed by learned Sub Divisional Judicial Magistrate, Hodal in a complaint case under Sections 420, 467, 468, 471 and 120-B IPC, whereby petitioners have been convicted under Section 420 IPC read with Section 34 IPC and sentenced to undergo RI for a period of two years each alongwith fine. The said judgment and order of sentence was affirmed by learned Additional Sessions Judge, Palwal vide its judgment dated June 01, 2015.

2. Briefly stated the facts of the instant case are that though accused/petitioners were recorded as joint owners in possession of land bearing Khewat Khata No. 234/269 Khasra No. 66 (2-15) total measuring 2 kanal 15 marlas situated in village Mitnaul, District Palwal, but they were not in actual physical possession of the same. Accused persons hatched a conspiracy to cause loss to the complainant and in pursuance thereof, accused Nos.1 to 3 filed suit on 06.08.2007 seeking possession. The said suit was decreed vide judgment dated 20.08.2007 passed by Permanent Lok Adalat, Faridabad. Thereafter, accused in collusion with each other, executed and got registered a sale deed dated 05.11.2007 to the extent of 1/8th share out of the land in question in favour of complainant for a sale consideration of ₹1,25,000/-. Father of the complainant was already in possession of the suit land. However, symbolic possession was given to the complainant vide sale deed dated 05.11.2007. The litigation with regard to possession was pending in the Court of Civil Judge (Junior Division), Palwal and the complainant came to know about the decree when it was produced before the said Court. When the complainant accosted accused Nos.1 to 4 about the said decree, it was told by accused No.1 that no such decree has been suffered by him and stated that it has been obtained by accused No.5 to 10 by way of fraud and impersonation. Thereafter, accused No.2 filed complaint before Permanent Lok Adalat, Faridabad but when it was proved that the case against accused No.1 to 4 is made out, he withdrew the said complaint. It was further alleged that the accused conspired against the complainant, suffered a decree in respect of the suit land in favour of accused Nos. 5 to 10 and then sold 1/8th share out of the same land to the complainant in a planned manner. Accordingly, accused have committed the offence

punishable under Sections 420, 467, 468, 471 and 120-B IPC.

3. In his preliminary evidence, complainant himself stepped into witness box as CW6 and examined Bhagwan Singh as CW1, Satbir Singh as CW2, Girraj Singh as CW3, Karan Singh as CW4 and Rakesh Kumar Jain as CW5. Thereafter, he tendered certain documents and closed his preliminary evidence on September 12, 2009.

4. On the basis of preliminary evidence led by the complainant, learned trial Court vide order dated April 01, 2010 summoned Sohan Lal, Ram Swarup and Ramji Lal to face trial for commission of offence under Section 420 read with Section 34 IPC.

5. On appearance of the accused, in pre-charge evidence, complainant appeared in the witness box as CW6 and examined Bhagwan Singh as CW1, Girraj Singh as CW2, Karan Singh as CW3, Suresh Chand Joshi as CW4 and Rakesh Kumar Jain as CW5.

6. On the basis of pre-charge evidence, learned trial Court vide order dated January 07, 2012 charge-sheeted the accused Sohan Lal, Ram Swarup and Ramji Lal under Section 420 read with Section 34 IPC to which they pleaded not guilty and claimed trial.

7. Incriminating circumstances appearing in the prosecution evidence were put to accused in their statements under Section 313 Cr.P.C. who denied the same, pleaded innocence and false implication. Though, accused opted to lead evidence in defence and examined Hari Singh as DW1 and Devo as DW2.

8. After hearing learned counsel for the parties and having gone through the material on record, accused were held guilty under Section 420 read with Section 34 IPC. Accordingly, they were convicted and sentenced, as

detailed above.

9. Appeal preferred by them also failed before the lower Appellate Court. At this backdrop of facts, instant revision petition has been preferred by them.

10. Here it would be pertinent to mention that at the time of issuance of notice of motion, petitioners did not challenge their conviction on merits and only confined their relief qua quantum of sentence. This Court has also scrutinized the impugned judgments as well as the relevant documents/evidence and is of the considered view that there is no scope for any interference in impugned judgment(s) as far as the conviction of the petitioner is concerned. As such, the conviction of the petitioners is upheld.

11. As far as the quantum of sentence is concerned, learned counsel for the petitioners has submitted that petitioners are senior citizens and are first offenders. No other case of similar nature is either pending or disposed of against the petitioners. They never misused the concession of bail during trial. They have already undergone more than 06 months, out of total substantive sentences of two years. Accordingly, he prays that the petitioners be granted the concession of the provisions of Probation of Offenders Act or sentences imposed upon them be reduced to the period already undergone by them.

12. This Court has given an anxious thought to the submissions made by learned counsel for the petitioners and have gone through the record available on file.

13. As per custody certificates dated January 29, 2016, by now, petitioners have already undergone more than six months out of total sentence of two years.

14. Undoubtedly, petitioners who are senior citizens are cooling their heels behind the bars. A glance at the custody certificates makes it crystal clear that they have already undergone more than 06 months out of total substantive sentence of 02 years. They have also asserted themselves not to be previous convict(s), which is otherwise not a disputed question.

15. Taking into consideration the above narrated discussion as well as the fact that petitioners have not challenged their conviction on merits, while affirming their conviction, it is observed that they are not entitled to the concession of probation. However, order of sentence is modified to the extent to the period already undergone by them with no change in the fine clause, which is stated to be already deposited with the trial Court.

16. With the aforesaid modification in the quantum of sentence, the revision petition stands dismissed. Petitioners are ordered to be released forthwith from custody.

FEBRUARY 29, 2016
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(JASPAL SINGH)
JUDGE