

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

CRR No.3323 of 2014.

Decided on:-22.04.2016.

Avtar Singh.

.....Petitioner.

Versus

Jasbir Singh and others

.....Respondents.

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

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Harkaran Singh, Advocate for
Mr. B.S. Bhalla, Advocate for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition against judgment dated 5.8.2014 passed by learned Additional Sessions Judge, Amritsar whereby his appeal against the judgment dated 15.10.2011 passed by learned Judicial Magistrate 1st Class, Amritsar, was dismissed.

Learned Magistrate vide judgment dated 15.10.2011 acquitted respondents-accused, namely, Jasbir Singh and Kashmir Singh of the charge framed against them.

Briefly stated, case of the prosecution was that petitioner-complainant Avtar Singh moved an application to the Superintendent of Police, City Amritsar for taking action against HC Kashmir Singh, Jasbir Singh, Amrit Kaur wife of Jasbir Singh & Sukhwinder Kaur wife of unknown, on the allegations that HC Kashmir Singh, posted at Police Post Hakimanwala was known to the complainant. Said Kashmir Singh with the

help of his brother Jasbir Singh, who is working as a travel agent has sent Balbir Singh to Italy. Kashmir Singh assured the complainant that he would also send him to Italy like Balbir Singh.

On this assurance, the petitioner-complainant talked with his friend Shingara Ram whose brother Satpal was also interested to go abroad. In January, 2004 the complainant, his friend Shingara Ram and Satpal met HC Kashmir Singh and he introduced them to his brother Jasbir Singh, Amrit Kaur wife of Jasbir Singh and his mother-in-law Sukhwinder Kaur. All of them assured that they would send these persons abroad through legal process and on their assurance, the complainant and Satpal Singh have shown their readiness to go abroad.

The accused also told the complainant that they have good links with people of Italy and they would send the complainant and Satpal to Italy. For this purpose, they demanded a sum of Rs.12 lacs i.e. Rs.6 lacs each from complainant Avtar Singh and Satpal. However, the deal was struck for a sum of Rs.11 lacs i.e. Rs.5.50 lacs each from the complainant and Satpal. They also asked them to give their passport and other documents for getting Visa.

On 7.2.2004, the petitioner-complainant arranged a sum of Rs.3.50 lacs and Shingara Ram arranged a sum of Rs.1.35 lacs for sending his brother Satpal abroad. The complainant was having passport with him, whereas Satpal was not having a passport. The accused persons came to the shop of father of complainant at Amritsar and obtained Rs.3.50 lacs, original passport and 16 photographs of passport size from him in the presence of his father as well as Hira Singh and Harpreet Singh. A sum of Rs.1.35 lacs and

16 photographs of passport size were also received by the accused persons from Shingara Ram and Satpal. They have also obtained signatures of Satpal on some blank papers and stated that they would themselves get prepared passport of Satpal.

On 25.2.2004, the accused persons had shown the complainant Visa, got issued in his favour and made a demand of Rs.1.50 lacs for purchasing ticket. On this, the complainant had paid Rs.1.50 lacs to accused Kashmir Singh on 2.3.2004 by visiting the house of his in-laws situated at village Gagrewal in the presence of his father. Similarly, the accused persons had also shown visa released in favour of Satpal and obtained Rs.4.00 lacs from Satpal at village Gagrewal.

After some days, they called the complainant and Satpal to Delhi and arranged their stay at Cheap-in Hotel where they stayed for 40 days and accused after obtaining a sum of Rs.15,000/- from Satpal sent them back to Amritsar. Bill of hotel, amounting to Rs.20,000/- was also paid by the complainant. After few days, the accused persons made another demand of Rs.50,000/- from the complainant by stating that his documents had been prepared and his ticket is to be purchased. After calling him at Ludhiana, they also obtained another sum of Rs.50,000/- from him, but they did not send him and Satpal to Italy.

On the basis of above complaint, the present case was registered against Jasbir Singh and his wife Amrit Kaur, whereas remaining accused were found innocent. Thereafter, the complainant moved an application to SSP, Amritsar for conducting inquiry against accused Kashmir Singh. After

enquiry, accused Kashmir Singh was found guilty. Statements of witnesses under section 161 Cr.PC were recorded. Accused Jasbir Singh and Kashmir Singh were arrested and proceedings under section 82 Cr.PC were initiated against accused Amrit Kaur.

The matter was investigated and Challan as provided under Section 173 Cr.PC was produced in the Court. As required under Section 207 Cr.PC, copies of Challan were supplied to the accused free of cost and charge under Sections 420/120-B IPC was framed against respondents-accused Jasbir Singh and Kashmir Singh to which they did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six witnesses, namely, complainant Avtar Singh as PW1, Hira Singh as PW2, Inspector Avtar Singh as PW3, Satpal as PW4, Shingara Ram as PW5 and Tarsem Singh as PW6. Thereafter, remaining evidence of the prosecution was closed vide order dated 10.9.2011 passed by the trial Court.

Thereafter, statements of the respondents-accused under Section 313 Cr.PC were recorded wherein they denied all the allegations against them and pleaded their false implication. In their defence, they examined Jasbir Singh as DW1 and Rajesh Kumar as DW2.

Learned trial Court after considering the entire evidence had acquitted the respondents-accused of the charge framed against them vide judgment dated 15.10.2011.

Aggrieved with the same, the petitioner-complainant filed an appeal in the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Amritsar vide judgment dated 5.8.2014.

It is in these circumstances, the petitioner has filed the present revision petition before this Court.

Learned counsel for the petitioner has argued that the petitioner-complainant has proved that fraud was committed by the respondents-accused, but the Courts below did not appreciate the evidence adduced by the petitioner in a proper manner. He has prayed for setting aside the impugned judgments passed by the Courts below and for conviction and sentence of the respondents-accused accordingly.

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

Perusal of the paper book shows that learned trial Court after considering the entire evidence has acquitted the respondents-accused while observing that complainant Avtar Singh PW1 has stated that the alleged amount of Rs.5.50 lacs was paid by him to the accused in the presence of his father Bhagat Singh, brother Harpreet Singh and friend Hira Singh. However, said Hira Singh while appearing in the witness box as PW2 did not support case of the prosecution and was declared hostile as he has stated that no amount was paid by Avtar Singh to accused Jasbir Singh in his presence.

Moreover, aforesaid Bhagat Singh and Harpreet Singh were also not examined by the prosecution, who were the best witnesses to prove the alleged payment made by the complainant to the accused. The complainant has also failed to prove as to how he arranged the amount of Rs.5.50 lacs. Similarly, Shingara Ram as PW5 has also failed to prove that he had actually paid the alleged amount of Rs.5.50 lacs to the accused persons.

Trial Court has further observed that Satpal as PW4 has stated in his cross-examination that at the time of payment of Rs.4 lacs by them and Rs.1.50 lacs by complainant Avtar Singh, the accused persons had shown their passport along with visa to them. However, the alleged passport and visa got issued in the name of the complainant and Satpal were neither recovered by the prosecution during investigation nor the same were produced on the file by the complainant. Even Avtar Singh as PW1, Satpal as PW4 and Shingara Ram as PW5 have also made contradictions and improvements in their respective statements with regard to the manner in which they met the accused, inducement made by accused to them, amount paid by them to the accused and assurance given to them by the accused for sending them abroad.

Similarly, the appeal filed by the petitioner-complainant against acquittal of the respondents-accused has been dismissed by learned Additional Sessions Judge, Amritsar while observing that the trial Court, after going through evidence produced on the file by the prosecution in a proper manner, has rightly held that the prosecution has failed to prove the guilt of the accused beyond a reasonable doubt.

It would also be relevant to mention here that the scope of revisional jurisdiction is vested with limited powers. Hon'ble Supreme Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** while dealing with the scope of revisional jurisdiction, 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 section 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.”

There are concurrent findings given by the Courts below in favour of the respondents-accused. Learned counsel for the petitioner-complainant has not been able to prove that in what manner, impugned judgments passed by the Courts below suffer from illegality, irregularity or perversity which may warrant interference of this Court by invoking its revisional jurisdiction.

Accordingly, judgment dated 15.10.2011 passed by learned Magistrate as well as judgment dated 5.8.2014 passed by learned Additional Sessions Judge, Amritsar are affirmed and the present revision petition, being devoid of any merit, is dismissed.

April 22, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE