

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

**Criminal Revision No.433 of 2015 (O&M)
Date of Decision: 10.11.2016**

Amarjit Kaur

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

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. Gopal Singh Nahel, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. J.K. Singla, Advocate
for the complainant.

HARI PAL VERMA, J.

Petitioner – Amarjit Kaur wife of Jaggar Singh, resident of Village Tolawal, Tehsil Sunam, District Sangrur has filed the present revision petition against judgment dated 22.9.2015 passed by learned Additional Sessions Judge, Sangrur, whereby her appeal against the judgment of conviction and order of sentence dated 23.9.2013 passed by learned Judicial Magistrate Ist Class, Sunam was dismissed.

Briefly stated, a case bearing FIR No.52 dated 16.4.2007 under

Section 406 IPC, Police Station Sunam was registered against the petitioner

on the basis of an application made by complainant - Sinder Kaur widow of Gurbachan Singh, resident of Chatha Nanhera. As per the FIR, husband of the complainant Gurbachan Singh died about 1½ year ago, but before his death, he had executed a Will in favour of the complainant regarding land measuring 15 kanals 13 marlas situated at Village Chatha Nanhera and therefore, she is the owner of the said land. She has two daughters namely Raj Kaur and Amarjit Kaur, the petitioner. Raj Kaur is married at Village Khai whereas Amarjit Kaur is married at Village Tolawal. A case was registered against Raj Kaur and she remained in Sangrur jail. The complainant had blind faith in Amarjit Kaur (petitioner). The petitioner usually instigated the complainant to sell her land and started living with her. The complainant being an old-aged lady, agreed to this. Gurpiar Singh is son of Amarjit Kaur and Ramjas son of Jarnail Singh is his brother-in-law. On 27.4.2016, Amarjit Kaur and Ramjas accompanied the complainant to Sunam for execution and registration of sale deed regarding land measuring 15 kanals and 13 marlas in favour of Kewal Singh and Balwinder Singh sons of Gurdev Singh to the extent of 1/3rd share and Amarjit Singh son of Jangir Singh and Jagtar Singh son of Jagroop Singh to the extent of 2/3rd share, for a consideration of Rs.11,89,000/- and got the sale deed executed, but the whole consideration amount remained in the custody of Amarjit Kaur and Ramjas. After the execution of the sale deed, on the next day, Amarjit Kaur and Ramjas took the complainant to State Bank of Patiala Branch Jakhepal and got her thumb impression on some documents on the pretext of depositing the whole consideration amount in the bank. After about six months, the complainant came to know from reliable resources that Amarjit Kaur and Ramjas had deposited only Rs.3,50,000/- in her name and the remaining amount was usurped by them. On enquiry from the accused

regarding her remaining amount, Amarjit Kaur and Ramjas told that the amount was deposited in the bank. Accordingly, the complainant sent her son-in-law Tarsem Singh to the bank, whereupon he obtained her thumb impressions on some papers and withdrew Rs.3,50,000/-. In this manner, the whole amount of Rs.11,89,000/- was usurped by the accused party.

On the basis of the FIR so registered, the police conducted investigation and found that an amount of Rs.11,89,000/- has been embezzled by the accused Amarjit Kaur and Ramjas and thereby, cheated the complainant.

In order to prove its case, prosecution examined PW-1 Lachhman Singh, PW-2 Kewal Singh, PW-3 Narain Dutt, PW-4 Sinder Kaur, PW-5 Raj Kaur, PW-6 SI Jarnail Singh, PW-7 Jarnail Singh from State Bank of Patiala, PW-8 SI Balpuri, PW-9 Prithi Chand, Patwari, PW-10 ASI Pavittar Singh, PW-10 Amarjit Singh Joshi (again numbered as PW-10), PW-11 Inspector Devinder Singh, PW-12 ASI Balwant Singh, PW-13 C-Hardev Kaur.

Learned Magistrate vide judgment dated 23.9.2013 convicted the petitioner for offence under Section 406 IPC and vide separate order of even date, sentenced her to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/- and in default of payment of fine, to undergo further RI for 15 days.

Aggrieved from the aforesaid judgment of conviction and sentence dated 23.9.2013, the petitioner preferred an appeal before learned Additional Sessions Judge, Sangrur, but the same was dismissed vide judgment dated 22.9.2015.

It is in these circumstances, the petitioner has filed the present

revision petition.

On 9.2.2015, this Court has passed the following order:-

CRM-4352-2014

Prayer in this criminal miscellaneous application is for condoning the delay of 77 days in filing the present revision petition.

Notice of the criminal miscellaneous application.

At the asking of the Court, Mr.Shilesh Gupta, Additional Advocate General, Punjab, who is present in the Court, accepts notice. A complete copy of the paper book has been supplied to him by the learned counsel for the applicant-petitioner.

After hearing learned counsel for the parties and in view of the grounds mentioned in the application, the delay of 77 days in filing the revision petition is hereby condoned.

CRM-4353-2015

Criminal miscellaneous application for exemption is allowed in terms of the prayer made, subject to all just exceptions.

CRR-433-2015

Challenge in this criminal revision petition is to the judgment, dated 22.09.2014 passed by the learned Additional Sessions Judge, Sangrur, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable under Section 406, IPC, recorded by learned Judicial Magistrate Ist Class, Sunam was dismissed.

Learned counsel for the petitioner at the very outset submits that in view of the concurrent findings of both the Courts below, he does not want to challenge conviction of the petitioner, however, there are fairly arguable points so far as quantum of sentence is concerned.

Notice of motion with regard to quantum of sentence only for 21.04.2015.

Since learned counsel for the petitioner had confined his arguments only qua the quantum of sentence, this Court has passed following order on 24.7.2015:-

“Learned counsel for the petitioner seeks time to get instructions whether the petitioner is ready to settle the matter amicably by paying the share of the complainant and her second daughter, to them.

On his request, adjourned to 21.9.2015.”

Again on 2.11.2015, learned counsel for the petitioner submitted that the petitioner is ready to enter into a dialogue with the complainant, so as to arrive at an amicable settlement, as the parties are closely related with each other. Considering the aforesaid request, this Court released the petitioner on interim bail, so as to show her *bona fide*.

On 23.12.2015, this Court passed the following order:-

“In compliance of the last order dated 21.12.2015 passed by this Court, complainant Smt. Sinder Kaur is present in the Court along with her daughter Smt. Raj Kaur. HC Mann Singh from Police Station Cheema, District Sangrur, who is also present, is directed to facilitate Smt. Sinder Kaur-complainant in getting her bank account open in the nearest branch of the bank, which is stated to be at Jakhepal, District Sangrur, within a period of one week from today.

Petitioner, who is present in Court, has taken undertaken to pay the amount of her share to the complainant by way of installments. Total amount was Rs.11,89,000/- and 50% share would come to the share of petitioner. She is directed to deposit an amount of Rs.50,000/- in the bank account of the complainant Smt. Sinder Kaur, within a period of two weeks from today. She shall contact HC Mann Singh of Police Station Cheema, District Sangrur to know the bank account number of the complainant, wherein she shall deposit the amount of Rs.50,000/- within a period of two weeks, as undertaken by her.

This amount of Rs.50,000/- will be treated as the 1st installment and the further appropriate directions shall be issued on the next date of hearing.

In view of the above peculiar facts and circumstances of the case, petitioner is directed to pay an amount of Rs.1500/- to the complainant towards costs as she has come to attend this Court, in compliance of the order dated 21.12.2015 passed by this Court.

List on 12.01.2016 for further considerations.

Petitioner is further directed to be present in the Court on the next date of hearing.

Presence of the complainant shall remain exempted till further orders.”

Thereafter, vide order dated 3.2.2016, the matter was even referred to Mediation and Conciliation Centre of this Court and the parties were directed to appear before it on 25.2.2016 with a specific direction to the petitioner to bring a demand draft in favour of the complainant in terms of order dated 23.12.2015, but despite that, the order dated 23.12.2015 was not complied with. Thereafter, various adjournments were granted to the petitioner to deposit the amount in question and settle the matter with the complainant.

Today, learned counsel for the petitioner has submitted that the petitioner is a poor lady and there is no previous conviction to her discredit. She has been able to raise an amount of Rs.50,000/- from all her resources and paid the same to the complainant and therefore, taking a lenient view of the matter, the sentence awarded to her be reduced to the period already undergone by her.

I have heard learned counsel for the parties and perused the record.

In order to determine the question of quantum of sentence, the Courts ought to weigh the degree of the culpability of the accused, its effect on others and the impact on the society. It is also of utmost importance that unnecessary leniency may not be shown while sentencing an accused, as it might have a cascading effect on the society as a whole and therefore, a balance has to be struck between the interest of the individual and the well being of the society. No doubt, a harsh punishment may serve as a deterrent, but at the same time, it would not benefit the convict in reforming himself, and thereby divesting the society of one of its constituents. The accused can learn more in society than in the company of criminals who are convicts.

This Court in the case of **Sohan Lal v. State of Punjab 1979 CLJ (Criminal) 113**, where the accused was first time offender and had undergone the sentence of 3½ months, his sentence was reduced to the period already undergone by him. Similarly, in the case of **Balwinder Singh v. State of Punjab CRR No.2874 fo 2012 decided on 31.10.2012** this Court had reduced the sentence of the accused therein under Sections 323, 328 and 326 IPC.

Admittedly, the petitioner, who is the real daughter of the complainant, has paid an amount of Rs.50,000/- to the complainant. Therefore, considering the fact that the petitioner has suffered a protracted trial since the year 2007 and there is no previous conviction to her discredit, coupled with the fact that she has already undergone actual sentence of more than one year, this Court feels that ends of justice would be met if the conviction of the petitioner is maintained and the sentence awarded to her is reduced to some extent.

Accordingly, while upholding the judgments of conviction passed by the Courts below, the present revision petition is dismissed. However, the sentence awarded to the petitioner is reduced to 1½ year.

The petitioner is directed to surrender before the Chief Judicial Magistrate/Duty Magistrate, Sangrur within a period of two months from today to undergo her remaining sentence. In case the petitioner fails to surrender within the stipulated period, Chief Judicial Magistrate, Amritsar, shall take appropriate action to secure her presence and commit her to custody to undergo the remaining sentence.

A copy of this order be sent to the Chief Judicial Magistrate, Amritsar for necessary compliance.

November 10, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No