

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

CRR No. 4730 of 2015 (O&M)

Date of decision:- March 28, 2016

Kamaljit Kaur

.....Petitioner...

Vs.

State of Punjab

....Respondent...

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. Avtar Singh Bhatti, Advocate,
for the petitioner.

Mr. K.S. Aulakh, AAG, Punjab.

JASPAL SINGH, J.

CRM-2530-2016

Documents (Annexures P-1 to P-3) are taken on record
subject to all just exceptions.

CRM stands disposed of.

Main case

By virtue of the instant revision petition, petitioner has
sought setting aside of impugned judgment dated 17.07.2014 passed by
ld. Trial court whereby she has been convicted in case FIR No. 78,
dated 08.04.2007, Police Station Tanda, District Hoshiarpur, Punjab

under Section 420 IPC and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month as well as judgment dated 17.11.2015 passed by the Id. Additional Sessions Judge whereby an appeal preferred by the petitioner challenging her conviction and sentence was dismissed while upholding the conviction but modifying the sentence by reducing the rigorous imprisonment to 2 years to rigorous imprisonment for 1 year with no change in fine clause.

2. In nutshell, the case of the prosecution is that Kulwant Singh, Gulzar Singh, Satpal Singh and Ashok Kumar, all are residents of village Maini Himmatpura, Police Station Tanda lodged a complaint with Director General of Police, Punjab against the petitioner Kamaljit Kaur to the effect that they have paid a sum of ₹20 lacs to Kamaljit Kaur accused for the purpose of sending their children to England. But neither their children were sent to abroad as promised nor the amount obtained by the accused was returned. It has further been alleged that the children of the complaints were summoned at Delhi and were kept camping there by showing duplicate VISA and tickets to them. The matter was inquired into by the police authority and ultimately the FIR in question was jotted down and the investigation was put into motion. After the completion of investigation, report under Section 173 Cr.P.C. was presented in the court of Id. Jurisdictional Magistrate. Finding a prima facie case appearing in the evidence and from the contents of

report under Section 173 Cr.P.C. and the documents annexed with it, the petitioner as well as Kulwant Singh -co-accused were summoned to face trial under Section 420 IPC to which they did not plead guilty and claimed trial.

3. In order to substantiate the charge framed against the petitioner and her co-accused, the prosecution examined as many as 13 witnesses and thereafter, the prosecution opted to close its evidence. When the petitioner-accused was questioned under Section 313 Cr.P.C. and confronted with evidence appearing against her, she while eliciting her explanation as required under Section 313 Cr.P.C., pleaded innocence and complained of false implication. However, she has admitted that though she introduced the complainant with her co-accused Kulwant Singh but she did not receive any amount.

4. After hearing learned counsel for the parties as well as appraisal of evidence, petitioner as well as her co-accused were sentenced as fully reflected in para No. 1 of this judgment.

5. Disheartened from her conviction and sentence, she preferred an appeal before the ld. Sessions Judge, which was entrusted to ld. Additional Sessions Judge, Hoshiarpur, who after hearing the learned counsel for the parties and scrutinizing the evidence available on record upheld the conviction of the petitioner under Section 420 IPC but by taking lenient view pleased to reduce the sentence of rigorous imprisonment of 2 years to one year. Still, aggrieved from her conviction and sentence, she preferred the instant revision petition.

6. While assailing the impugned judgments and orders, it has been argued with vehemence by learned counsel for the petitioner that both the courts below have failed to appreciate the evidence available on file and settled canons of, which has resulted into mis-carriage of justice. The decisions rendered by both the courts below are based upon conjectures and surmises and the matter has been decided in mechanical manner. Even both the courts below have also failed to appreciate that the prosecution has remained unsuccessful to establish the ingredient, which constitute an offence under Section 420 IPC. Moreover, there is no evidence adduced by the prosecution that the petitioner had an intention to commit cheating or fraud with the complainants at the very inception and on this score alone the conviction and sentence of the petitioner are not sustainable.

7. It has been next argued by learned counsel for the petitioner that even both the courts below have relied upon compromise/agreement Mark 'A' which is inadmissible in evidence for want of its proof as required under the provisions of Indian Evidence Act. The same is forged and fabricated document brought into existence by the complainants Kulwant Singh etc. just to secure the conviction of the petitioner.

8. While concluding arguments, it has been submitted by learned counsel for the petitioner that since the prosecution has failed to prove the ingredients of offence under Section 420 IPC and further that it has not been taken into consideration by the 1d. Trial court as

well as the Id. Appellate court, the conviction as well as the sentence are against law and facts. Thus, the petitioner is entitled to the benefit of doubt. Thus, the impugned judgments and orders of conviction are liable to be accepted by way of instant revision petition and she deserves to be acquitted.

9. On the other hand, learned State counsel has supported the judgments rendered by both the courts below. He has vehemently submitted that there is cogent and convincing evidence adduced by the prosecution, which clearly establishes that Kamaljit Kaur introduced the complainants Kulwant Singh etc. to her co-accused Kulwant Singh and received the amount from the complainants for sending their children to England. Kamaljit Kaur by showing duplicate VISA and tickets succeeded in obtaining various amounts from the complainants. The children of the complainants were taken by her to Delhi where they were kept camping but ultimately neither the children of the complainants were sent by the petitioner to England nor the money so received by her was returned. Not only this, even Kamaljit Kaur-petitioner also agreed/undertook to repay the amount and executed a compromise in this regard Mark 'A'. Thus, the case of the prosecution is fully proved and Kamaljit Kaur has been rightly convicted and sentenced. The impugned judgment of conviction and order of sentence passed by Id. Trial court and upheld by Id. Appellate court though with change of modification in the quantum of sentence, do not call for any interference by this Court and the instant revision petition devoid of

merits is liable to be dismissed.

10. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the judgments rendered by both the courts below, this Court does not find any merit in the various submissions made by learned counsel for the petitioner. Rather, this Court is of the considered view that the same are without actual and factual substance.

11. A close scrutiny of the statements of the various witnesses especially Ravi Pal PW-2, Ashok Kumar PW-3, Gulzar Singh PW-4 and Kulwant Singh PW-5 (complainants) makes it evident that they gave various amounts to the petitioner for sending their children to abroad i.e. England. Though, as per the version of the petitioner, she further handed over that amount to Kulwant Singh her co-accused, who has already been acquitted by the Id. Additional Sessions Judge in an appeal by granting the benefit of doubt.

12. Here, it would not be out of place to mention that Kamaljit Kaur-petitioner executed an agreement/compromise PW5/A in favour of Kulwant Singh-complainant, in which, it has been clearly recited that it has been executed in between the parties as security to send Jasmail Singh s/o Kulwant Singh abroad which admittedly bears the signatures not only of Kulwant Singh but also thereof Kamaljit Kaur-petitioner. The said agreement was scribed on 09.06.2006, which was attested by Piara Singh and Harbans Singh. Another complainant namely Ashok Kumar PW-3 has also categorically deposed while

appearing in the witness box that he made the payment of different amounts to Kamaljit Kaur, who had promised to send him to England but she did not send him to England and siphoned the amount so received by her. Moreover, the petitioner has already undertaken to refund/repay the amount though on behalf of Kulwant Singh to the complainants, is suggestive of the fact that she received the amount from the complainants, who are admittedly sent to abroad rather they were sent to different other stations, who returned back. There is also cogent and convincing evidence adduced by the complainants that they collected the amount either by withdrawing the same or by taking loan from their near and dear while handing over the same to Kamaljit Kaur. Though, the aforesaid witnesses have been subjected to thorough and lengthy cross-examination but nothing fruitful to the accused could be wrenched out from any of them.

13. In the light of what has been discussed above, this Court is of the considered view that there is no illegality and infirmity in the impugned judgments and orders of conviction. Rather, the same are absolutely in consonance with the evidence available on file and settled canons of law. As such, the impugned judgments of conviction of orders of sentence do not call for any interference by this Court.

14. As an upshot of the aforesaid discussion, this Court does not find any merit in the instant petition. As such, the same is dismissed.

CRM-39885-2015

In view of the order passed in main petition, the application for suspension of sentence is dismissed as having become infructuous.

March 28, 2016
sonika

(JASPAL SINGH)
JUDGE