In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.4739 of 2015 (O&M)

.....

Date of decision:11.5.2016

Jagtar Singh and another

...Petitioners

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Yogesh Chaudhary, Advocate for the petitioners.

Ms. Shivali, Assistant Advocate General, Punjab for the respondent-State.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 17.11.2015 passed by learned Additional Sessions Judge, Ludhiana, dismissing the appeal of the petitioner filed against the judgment of conviction and the order of sentence dated 14.7.2011 passed by learned Judicial Magistrate Ist Class, Ludhiana. However, the sentence imposed by the learned JMIC was reduced from three years to one and half years for the offence under Section 420 IPC.

Notice of motion was issued in this case. Ms Shivali, learned Assistant Advocate General, Punjab has put in appearance and contested this revision petition. Lower Courts record was also summoned.

I have heard learned for the petitioner as well as learned Assistant Advocate General, Punjab and have gone through the record.

The brief facts of the case as noted by the learned Judicial Magistrate Ist Class, Ludhiana are as under:-

> "In brief, the facts of the present case are that the present case was registered on the basis of application moved by Sh. Sudhir Ahuja, Assistant General Manager of State Bank of India, Branch Miller Ganj, Ludhiana to the SSP, Ludhiana, the contents of which, in brief are that the State Bank of India, a body corporate, constituted under the Bank of India Act, 1955, having its central office at Madam Cama Road, Nariman Point, Mumbai and one of its local offices at Sector 17, Chandigarh and branches, amongst other places, at Miller Ganj, Ludhiana. It is stated that this complaint is being filed through Sh. Sudhir Ahuja, Assistant General, Manager, who is Principal Officer and Incharge of the branch and is fully competent to file this complaint. It is further stated that accused persons namely Swarn Singh and Jagtar Singh being partners of M/s Mac India, had applied to the complainant bank for certain credit facilities, which were granted by the complainant. It is further stated that the accused had availed of credit facilities by way of cash credit (Special Hypothecation) limit to the extent of Rs.4,50,000/- and Medium Term Loan of Rs.2 Lacs for carrying on their business of manufacturing of Tractor and Motor parts. It is further stated

that the accused No.2 Jagtar Singh created an equitable mortgage on 24.5.1995 extended on 29.3.1996 in respect of his immovable property i.e. House No.B-XVI-519 measuring 140 sq. yards situated at Kucha Ahluwalia, near mohalla Gobind Pura, Miller Ganj, Ludhiana by depositing the sale deed, bearing wasika No.347/49 dated 25.1.1995 with the complainant bank as collateral security for the above credit facilities availed by both the accused in the name of M/s Mac India. It is stated that the accused had also hypothecated the stocks and pledged the machinery purchased with the amount of Term Loan, with the complainant Bank, which is in the actual possession of the accused. It is stated that the complainant has only symbolic possession of the hypothecated stock and the pledged machinery. It is alleged that the complainant has come to know that before availing the above Credit facilities from the complainant bank, the accused No.2 Jagtar Singh had also availed cash credit limit to the extent of Rs.1 Lac and Medium Term Loan of Rs.1,14,000/- from the State Bank of India, Gill Road, Ludhiana in the name of his proprietorship concern M/s J.S. Fasteners and the accused No.2 stood as Guarantor in the said accounts. It is stated that the accused No.2 Swarn Singh had also created an equitable mortgage on 29.1.1993 in respect of property i.e. House No.B-XVI-519 measuring 140 sq. yards situated at Kucha Ahluwalia, near Mohalla Gobind Pura, Miller Ganj, Ludhiana as collateral security. It is alleged that in spite of the fact that property of accused Swaran Singh, mentioned above, was mortgaged by SBI, Gill Road, Ludhiana, the accused Swaran Singh transferred/sold the said property to his son Jagtar Singh vide sale deed wasika No.34749 dated 25.1.1995 mentioning therein that there is no charge on the said property and thereafter both the accused in conspiracy with each other constituted a partnership firm M/s Mac India and availed cash credit limit to the extent of Rs.4,50,000/- and Medium Term Loan of Rs.2 Lac from the complainant bank and accused No.2 Jagtar Singh created an equitable mortgage on 24.5.1995 extended on 29.3.1996 in respect of same property in favour of complainant bank. It is alleged that the property mortgaged with both branches of State Bank of India, is same and both the accused have cheated the complainant bank by entering into a conspiracy, as property mortgaged by accused Jagtar Singh with the complainant was already mortgaged by accused Swarn Singh with the State Bank of India, Gill Road, Ludhiana with an intention to defraud/cheat the complainant bank. The accused No.1 executed a sale deed dated 25.1.1995 in favour of accused No.2 in respect of the property already mortgaged with SBI, Gill Road, Ludhiana. This sale deed was executed by them to avail Credit Facilities from the complainant bank in the name of their partnership firm. In this manner, they have caused wrongful gain for themselves and caused wrongful loss to the complainant and misappropriated the funds of the complainant availed by them by making wrong representation. On the basis of above said application, the present case was registered. Dring investigation, the Investigation Officer recorded statements of witnesses and took into police possession relevant documents and arrested the accused. After completion of investigation and necessary formalities, present challan was presented against the accused."

At the time of arguments, learned counsel for the petitioners only argued for reduction of the sentence. He argued that the petitioners are suffering since the registration of the FIR in 2002 i.e. for the last about 14 years. The petitioners are poor persons, only bread earners of the families. Accused Swaran Singh is an old person and the other convict is his son Jagtar Singh. He also argued that they are the first offenders.

Keeping in view the facts and circumstances of the present case and the allegations of the prosecution against the accused persons and the fact that they are suffering for the last about 14 years and petitioner Swaran Singh is an old person and they are poor persons, only bread earners of the families, first offenders, Jagtar Singh has already undergone seven months and 19 days upto 27.4.2016 including remission and Swaran Singh has already undergone six months and 15 days including remission, I accept this revision petition partly regarding the modification of the sentence and the sentence of imprisonment of the petitioners is reduced to the sentence of imprisonment already undergone by them. Petitioners Jagtar Singh and Swarn Singh, who are in custody, be released forthwith if their custody is not required in connection with any other case, subject to payment of fine, if already not paid.

May 11, 2016. **(Inderjit Singh)**
Judge

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