

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

CRR No.4741 of 2015 (O&M).
Decided on:-07.01.2016.

Gurbachan Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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. O.P. Kamboj, Advocate
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA, J.

The petitioner, who is about 80 years of age, has filed the present revision petition against the judgment dated 28.10.2015 passed by learned Additional Sessions Judge, Ferozepur, whereby his appeal against the judgment of conviction and order of sentence dated 13.5.2015 passed by learned Sub-Divisional Judicial Magistrate, Guruharsahai, was dismissed.

Learned Magistrate vide judgment dated 13.5.2015 held the petitioner guilty for offence under Section 420 IPC and vide separate order of that date, sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-.

Briefly stated, FIR No.157 dated 17.9.2010 under Section 420 IPC was registered against the petitioner at Police Station Guruharsahai on the complaint filed by Joginder Singh. It is the case of the prosecution that the petitioner-accused was owner of land measuring 16 Kanals falling in Rectangle No.158, Killa Nos.1 and 2. He had sold the same to the complainant vide sale deed dated 15.1.2003. The possession of said land was also delivered by the petitioner to the complainant. However, on 27.5.2004, the petitioner sold land measuring 8 Kanals to one Satpal out of Rectangle No.158 Killa No.2. At the time of subsequent sale dated 27.5.2004, he was not the owner of that land. In this way, the petitioner cheated the complainant.

After having conducted the investigation, Challan was presented against the petitioner-accused and copy thereof was supplied to him as envisaged under Section 207 Cr.P.C. Finding a prima-facie case against the petitioner, he was charge sheeted under Section 420 IPC. The trial Court vide judgment and order dated 13.5.2015 had convicted and sentenced the petitioner in the manner as mentioned hereinabove. Aggrieved against the judgment and order passed by learned trial Court, the petitioner preferred an appeal, but the same was also dismissed by learned Additional Sessions Judge, Ferozepur vide judgment dated 28.10.2015. It is

in these circumstances the petitioner has approached this Court by filing the present revision petition.

Learned counsel for the petitioner has submitted that the prosecution has failed to prove the case against the petitioner. The allegations against the petitioner are that earlier, he was owner of land measuring 16 Kanals which was sold vide sale deed dated 15.1.2003 to complainant Joginder Singh and possession thereof was also delivered to him. Further allegation against him is that he sold land measuring 8 Kanals to Satpal vide sale deed dated 27.5.2004, though he was not owner of the said land at that time. Learned counsel has submitted that even if the allegations of the prosecution are admitted to be correct, then also, no cheating has been committed by the petitioner so far as complainant Joginder Singh is concerned. If anybody can be said to have been cheated, then it is the subsequent vendee, namely, Satpal and not the complainant and, therefore, the findings recorded by the Courts below are contrary to the record.

On the other hand, learned State counsel has filed the custody certificate in Court, which is taken on record. Learned State counsel on the basis of said certificate contends that there is no case pending against the petitioner except the present one and the actual sentence undergone by the petitioner is 2 months and 17 days.

I have heard learned counsel for the parties.

The contention of learned counsel for the petitioner that he has not cheated the complainant has no legal force as the petitioner had no right

to execute the sale deed dated 27.5.2004 in favour of Satpal Singh because he was well aware of the fact that he was no longer the owner of that land. As such, no interference is warranted in the findings recorded by the Courts below. Accordingly, findings regarding judgment of conviction passed by the trial Court and affirmed by the first Appellate Court are upheld.

Perusal of the paper book reveals that on December 08, 2015 when notice of motion was issued by this Court, learned counsel for the petitioner had argued that the petitioner is 80 years of age and his case may be considered for probation.

Even during the course of arguments, learned counsel for the petitioner has submitted that as against the awarded sentence of one year, the petitioner has already undergone 2 months and 17 days and prayed that the petitioner may be released on probation.

Admittedly, the petitioner is a first time offender and is suffering the agony of trial since 17.9.2010, when the FIR was registered against him in this case. He is stated to be 80 years old person. Therefore, taking into consideration these facts and circumstances as well as in the light of judgments of this Court in ***S.P. Malhotra Versus U.T., Chandigarh 2007(3) RCR (Criminal) 735*** and ***Kulwant Singh Versus State of Punjab 2003(1) CLJ (Criminal) 242***, I am of the opinion that it is a fit case where the benefit of probation can be granted to the petitioner.

Accordingly, the petitioner is ordered to be released on probation on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of concerned Chief Judicial

Magistrate with an undertaking that during the period of one year, he shall not commit an offence and shall maintain peace and be of good behaviour. In case the petitioner violates the terms of the bonds, he shall appear before the concerned Chief Judicial Magistrate to receive his remaining sentence.

With aforesaid modification in the order of sentence, the instant revision petition stands disposed of.

January 07, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE