

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

**CRR No.4909 of 2015 (O&M)
Date of Decision: May 13, 2016**

Baldev Singh

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Pardeep Virk, Advocate for the petitioner.

Mr. P.S. Paul, DAG, Punjab.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Kuldip Singh J.

Impugned in the present revision petition is the judgment dated 31.10.2015 passed by learned Addl. Sessions Judge, Gurdaspur, affirming the judgment of conviction and order of sentence dated 21.12.2013 passed by learned Judicial Magistrate 1st Class, Batala, vide which petitioner was convicted for the commission of offence punishable under Section 420 IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹2,500/-, in default thereof to further undergo rigorous imprisonment for a period of two months.

The facts of the case are that the present case was registered on the written complaint filed by one Surjit Singh son of

Sajjan Singh, resident of village Khajala, Tehsil Batala and District Gurdaspur on 22.07.2005 (Ex.PA). In the complaint (Ex.PA), Surjit Singh stated that Kuldeep Singh son of Uttam Singh, resident of village Khajala visited his house and offered him to send his son Hardev Singh abroad as he was unemployed. Kuldeep Singh further disclosed that his relatives, are in business of sending people abroad. Thus, he would talk to them to send his son to Greece. The complainant Surjit Singh talked to his wife and agreed to the proposal of Kuldeep Singh, who demanded ₹4,00,000/- for this purpose. After some days, Kuldeep Singh accompanied by his father-in-law Baldev Singh (present petitioner) son of Hazara Singh, Jaswinder Kaur @ Ashi wife of Baldev Singh and Harjit Singh son of Baldev Singh, all residents of village Malia Khurd, Tehsil and District Gurdaspur, visited the house of Surjit Singh, complainant and took passport of Hardev Singh and ₹3,86,000/- from him in the presence of Nirmal Singh son of Piara Singh, resident of village Khajala, who was already present in his house and gave assurance that they would send his son Hardev Singh Greece within two months. Thereafter, even after the lapse of one year and eight months, neither the money was returned to the complainant nor his son was sent abroad.

The said complaint was enquired into and after inquiry, an FIR under Section 420 IPC was registered on 28.10.2005 at Police Station Ghuman, Tehsil Batala, District Gurdaspur.

It also comes out that during the inquiry, complainant Surjit Singh had made another statement (Ex.PB) before the police,

wherein he stated that ₹50,000/- were paid by him to Kuldeep Singh, his father-in-law Baldev Singh, wife of Baldev Singh and Harjit Singh son of Baldev Singh in the month of January 2004 when said persons had visited his house. The said money was given by the complainant to the aforesaid persons for sending Hardev Singh, son of complainant to Greece. The deal was struck for ₹4,00,000/-. The complainant further disclosed that on 02.04.2004 at about 3.00 p.m., he along with his wife was present in his house, then Baldev Singh, his son-in-law Kuldeep Singh, wife of Baldev Singh and Harjit Singh son of Baldev Singh visited his house. At that time, his commission agent Nirmal Singh was also present there. He borrowed ₹1,96,000/- from Nirmal Singh and handed over the same to agent Baldev Singh. Thereafter, to pay the balance amount, he mortgaged his one acre land with Bikramjit Singh son of Gurmej Singh for ₹1,40,000/- on 28.08.2004 and on the same day, the said money was handed over to Baldev Singh. He further stated that when ₹50,000/- were handed over, he also handed over the passport of his son to Baldev Singh.

After the completion of the investigation, the police found Kuldeep Singh, Jaswinder Kaur @ Ashi wife of Baldev Singh and his son Harjit Singh are innocent. Therefore, only Baldev Singh along with Prakash Sharma, resident of 32 Palika Palace, 2nd Floor, Panchkuian Road, New Delhi were challaned. Prakash Sharma is a proclaimed offender.

On appearance before the trial court, Baldev Singh was charge-sheeted under Section 420 IPC. Later on, prosecution moved

application under Section 319 Cr.P.C., in which accused Kuldeep Singh was also summoned to face trial along with Baldev Singh.

In support of its case, the prosecution examined complainant Surjit Singh as PW1, Nirmal Singh son of Piara Singh as PW2, Bikramjit Singh son of Gurmej Singh as PW3, ASI Harsharan Singh as PW4 and ASI Harpal Singh as PW5 and thereafter the prosecution evidence was closed by court orders.

When examined under Section 313 Cr.P.C., accused Kuldeep Singh stated that his father-in-law Baldev Singh is resident of village Malia Khurd and he is resident of village Khajala, which is at a distance of 10-12 Kms. from village Malia Khurd and he is innocent and has been falsely implicated in this case. Baldev Singh also claimed that he is innocent and has been falsely implicated in this case. The accused did not lead any evidence.

After hearing learned Public Prosecutor, learned counsel for the accused and going through the case file, the learned Judicial Magistrate 1st Class, Batala, convicted and sentenced the accused Baldev Singh as aforesaid. However, Kuldeep Singh was acquitted.

The appeal was dismissed by the learned Addl. Sessions Judge, Gurdaspur, as discussed above.

I have heard learned counsel for the parties and have also carefully gone through the case file.

In the complaint dated 22.07.2005 addressed to the Director General of Police, Punjab, which is duly typed and which was filed about 1 year, 8 months after making the payment to the

accused. The complainant had stated that about 1 year, 8 months ago, he had handed over passport of his son Hardev Singh and ₹3,86,000/- to Kuldeep Singh, who happens to be resident of village Khajala, which is the same village where the complainant resides, whereas Baldev Singh, father-in-law of the Kuldeep Singh, Jaswinder @ Ashi, mother-in-law of Kuldeep Singh and Harjit Singh son of Baldev Singh-petitioner reside in different village i.e. Malia Khurd. It would mean that the said payment was made somewhere in November 2003 and the payment was made in one go.

However, when the matter was enquired into, Surjit Singh, complainant made statement (Ex.PB) before the police, which was duly signed by him, in which he split the payment in three parts. As per version given in the statement Ex.PB, ₹50,000/- were given in January 2004 to accused Kuldeep Singh, his father-in-law Baldev Singh, mother-in-law Jaswinder Kaur @ Ashi and Harjit Singh son of Baldev Singh for sending Hardev Singh to Greece. The deal was struck for ₹4,00,000/-. In the original complaint dated 22.07.2005 (Ex.PA), the fact that the total deal was settled at ₹4,00,000/- is not mentioned. Regarding the further payment, it was stated that on 02.04.2004, ₹1,96,000/- were handed over to Baldev Singh when all the said persons, Kuldeep Singh, Baldev Singh, wife of Baldev Singh and Harjit Singh son of Baldev Singh visited his house. At that time, Nirmal Singh, commission agent was also present there from whom ₹1,96,000/- were borrowed. The third payment of ₹1,40,000/- was made on 28.08.2004 after the complainant mortgaged his one acre

land with Bikramjit Singh son of Gurmej Singh. It was further stated in the statement (Ex.PB) that passport was handed over along with ₹50,000/- to the accused, which means that the passport was also handed over in January 2004.

The original complaint dated 22.07.2005 (Ex.PA) shows that it was Kuldip Singh, who happens to be co-villager of the complainant, visited the house of the complainant and made offer to send his son Hardev Singh to Greece. It was only when the complainant agreed to the said proposal that on the next occasion, Kuldip Singh brought his father-in-law Baldev Singh, mother-in-law Jaswinder Singh @ Ashi and brother-in-law Harjit Singh with him and collected passport and ₹3,86,000/- from the complainant.

In this way, the details of the payment and manner of the payment are contradictory in the complaint dated 22.07.2005 (Ex.PA) filed after 1 year 8 months of the payment and the statement (Ex.PB) dated 22.08.2005 made by the complainant to the police during investigation.

Now, when the evidence of the complainant is scanned, it comes out that Nirmal Singh in his statement as PW2 only stated that Surjit Singh, complainant had borrowed ₹1,96,000/- from him on 02.04.2004. He did not say that money was paid to any of the accused in his presence.

Bikramjit Singh, PW3 only talks about the mortgage of the land by Surjit Singh, complainant to him on 27.10.2004 for ₹1,40,000/-, whereas according to the statement of the complainant

(Ex.PB), the payment of ₹1,40,000/- was made on 28.08.2004 when he mortgaged the land. The mortgage deed is Ex.PW3/A. It also shows that the story of payment of ₹1,40,000/- on 28.08.2004 is contrary to the record.

Now, only left is the statement of complainant. After going through the complaint and the statement of the complainant, I am of the view that it is shaky. First of all, there is contradiction in the written complaint filed by the complainant after 1 year 8 months of the payment and the statement made by him before the police during inquiry.

The details of the contradiction have been discussed above. When Surjit Singh, complainant was stepped into witness box for cross-examination, he stated that accused refused to send his son abroad after one month of receiving the money. After payment of the money, his son got issued new passport. The passport of his son was issued in the year 2006. However, according to the complaint, the passport was given in January 2004 to the accused Kuldeep Singh and Baldev Singh, when the alleged offer of sending Hardev Singh son of the complainant was made by the accused.

In cross-examination, the complainant further stated that offer to send his son Hardev Singh abroad was given by accused Harjit Singh not by Baldev Singh or his wife Jaswinder Kaur @ Ashi. He further stated that he was only in touch with Harjit Singh and when Harjit Singh refused to send his son abroad, he moved application before the Senior Superintendent of Police, Gurdaspur

after one month of making the payment. Harjit Singh is the same person, who is son of Baldev Singh. Baldev Singh belongs to different village, namely, Malia Khurd, whereas complainant and Kuldip Singh, son-in-law of Baldev Singh-accused are resident of same village Khajala. The complainant further asserted in cross examination that Harjit Singh (son of Baldev Singh) took his money and fled abroad and is not traceable after that. He further stated that Harjit Singh came to India from abroad and when he received money from him for sending his son Hardev Singh abroad and thereafter left India. It goes to show that money is alleged to be paid to Harjit Singh son of Baldev Singh and not to Baldev Singh as claimed in Ex.PA and Ex.PB. However, Harjit Singh was found innocent by the police and was not challaned at all.

In these circumstances, it cannot be said that version of the complainant is correct that he had paid Rs.3,86,000/- or ₹4,00,000/- to Baldev Singh for sending his son abroad. It being so, the conviction of Baldev Singh under Section 420 IPC is not sustainable in the eye of law.

As a result of the foregoing discussion, the present revision petition is allowed. The impugned judgments of both the courts below and the order of sentence are set aside and Baldev Singh stands acquitted of the charges framed against him. He be released forthwith if not required in any other case.

(KULDIP SINGH)
JUDGE

May 13, 2016
sarita

