

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

Criminal Revision No.4963 of 2015(O&M)  
Decided on:-December 07, 2016.

Gurcharan Singh.

.....Petitioner.

Versus

Jawala Singh.

.....Respondent.

***CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.***

Present:- Mr. Harsh Chopra, Advocate  
for the petitioner.

Mr. Sandeep Jain, Advocate  
for the respondent.

**HARI PAL VERMA, J.**

The petitioner has filed the present revision petition against judgment dated 02.12.2015 passed by learned Additional Sessions Judge, Patiala whereby his appeal against judgment of conviction and order of sentence dated 18.12.2014 passed by learned Judicial Magistrate 1<sup>st</sup> Class, Rajpura was dismissed.

Briefly stated, the case of the respondent-complainant Jawala Singh is that vide agreement to sell dated 9.8.2005, the petitioner-accused Gurcharan Singh agreed to sell his land measuring 14 bighas 19 biswas 4 biswas being 1/5 share in the total land measuring 74 bighas 16 biswas, situated at Village Loohand, Tehsil Rajpura, District Patiala. Accordingly, he received Rs.2,50,000/- as earnest money from the complainant. Petitioner-accused Gurcharan Singh agreed to execute and get the sale deed registered on or before 28.02.2006 on receipt of balance sale consideration. Since the

land was mortgaged with the Cooperative Society Bank, Limited, Banur and the Agriculture Development Bank, Rajpura, the petitioner agreed to get the same redeemed by depositing the loan amount with the above said banks before the date fixed. On the request of petitioner, the respondent-complainant agreed to extend the time for execution and registration of sale deed from 28.02.2006 to 31.08.2006. At that time, vide writing dated 27.2.2006, the petitioner-accused also received Rs.1,50,000/- more from the respondent-complainant.

On 27.2.2006, the petitioner also handed over physical possession of the land in question to the respondent. As such, the respondent along with his sons came into possession of the entire land measuring 74 bighas 16 biswas as the remaining land had already been purchased by the respondent from other co-accused, namely, Karanjit Singh, Sandeep Singh, Varinder Singh, Gurvinder Singh and Gurbachan Singh.

The petitioner could not execute the sale deed qua his share as the share as the same was mortgaged with the above said banks. On 31.8.2006, the respondent-complainant was ready and willing to get the sale deed executed and registered on payment of balance sale consideration, but the petitioner-accused was not in a position to do the needful as a civil suit filed by co-accused Gurbachan Singh was pending. Therefore, on request of the petitioner-accused, the date for execution and registration of the sale deed was extended from 31.08.2006 to 1.1.2007 and a writing to this effect was made on 29.8.2006. On 30.12.2006, the petitioner-accused approached

and requested the respondent-complainant to extend the date as he had shown his inability to get the sale deed executed and registered due to injunction order in the civil suit. In these circumstances, the date was extended from 1.1.2007 to 30.5.2007.

Before 30.5.2007, the respondent-complainant had approached the petitioner-accused to execute and get the sale deed registered, but he told that he would get the sale deed executed and registered very soon by giving a notice in writing to the complainant. However, till 30.5.2007, no notice or message was received by the respondent-complainant from the petitioner-accused.

It was further alleged by the respondent-complainant that the petitioner-accused committed breach of terms of agreement to sell dated 9.8.2005 and subsequent writings dated 27.2.2006, 29.8.2006 and 30.12.2006. In the end of July, 2007 co-accused of the petitioner-accused, namely, Karanjit Singh, Sandeep Singh, Varinder Singh and Gurvinder Singh, who are real brothers of the petitioner-accused, had forcibly occupied the land in question and when the complainant asked them about it, they told that they had purchased the land from the petitioner-accused. Therefore, the petitioner-accused in collusion with other co-accused had played a fraud with the respondent-complainant by executing the sale deed dated 18.5.2007 and by ignoring the agreement to sell dated 9.8.2005 in favour of the complainant. All the accused had a mala-fide intention to usurp the amount of Rs.4 lacs paid by the respondent-complainant to the petitioner-accused as

earnest money. In this manner, all the accused hatched a criminal conspiracy and committed fraud with the respondent-complainant.

After recording preliminary evidence of the respondent-complainant, all the accused were ordered to be summoned to face trial under Section 420 read with Section 34 IPC by learned Magistrate vide order dated 12.11.2008. Thereafter, pre-charge evidence was recorded and all the accused were charge-sheeted for the aforesaid offence.

In the post-charge evidence, the accused only cross-examined the respondent-complainant. Thereafter, statements of accused under Section 313 Cr.P.C. were recorded in which they pleaded their innocence and stated that they were implicated in a false case. The petitioner-accused had also taken a stand that the alleged agreement is a forged and fabricated document, which was prepared to grab his land. In their defence, the accused had examined as many as 4 witnesses.

Vide judgment dated 18.12.2014, learned Magistrate had acquitted accused, namely, Karanjit Singh, Sandeep Singh, Varinder Singh, Gurvinder Singh and Gurbachan Singh, but held the petitioner-accused Gurcharan Singh guilty and accordingly convicted him for commission of offence punishable under Section 420 IPC. Vide separate order dated 18.12.2014, learned Magistrate had sentenced the petitioner-accused to undergo simple imprisonment for one and a half year and to pay a fine of Rs.2,000/- and in default thereof, to further undergo simple imprisonment for one month. However, the fine was deposited by the petitioner-accused

before the trial Court.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Additional Sessions Judge, Patiala vide judgment dated 02.12.2015.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

On December 22, 2015, when the present revision petition came up for hearing before this Court, learned counsel for the petitioner had not challenged conviction of the petitioner in view of the concurrent findings of both the Courts below. He confined his arguments to the extent that the sentence awarded by the Courts below is on higher side. As such, notice of motion was issued by this Court for 29.02.2016 with regard to quantum of sentence only.

Learned counsel for the petitioner has argued that the petitioner is in custody since 02.12.2015 and as such, considering the custody of the petitioner and the fact that he is facing the agony of criminal proceedings since the year 2007, the sentence awarded by the trial Court and affirmed by the appellate Court be reduced to the period already undergone by the petitioner. He has further submitted that the petitioner is a first time offender and is only bread earner of his family. The dispute between the parties is already subject matter of civil litigation as regular second appeal is pending before this Court.

Learned counsel for the respondent, on the other hand, though has not disputed the custody of the petitioner and pendency of civil litigation between the parties, but has argued that the petitioner-accused has committed fraud with the respondent and as such, no leniency is required in the quantum of sentence imposed upon him.

I have heard learned counsel for the parties.

This Court has scrutinized the impugned judgments passed by the Courts below as well as other relevant documents and evidence and finds that there is no scope of interference with the impugned judgments passed by the Courts below. Moreover, learned counsel for the petitioner has also not challenged conviction of the petitioner and confined his prayer to the extent of quantum of sentence only.

However, as regards pleas of the petitioner that he is facing criminal proceedings since the year 2007, a first time offender; only bread earner of his family; and as against the awarded sentence of one and a half year, he is in custody since 02.12.2015 i.e. for a period of one year and 5 days, this Court finds that the prayer made by learned counsel for the petitioner carries weight. Moreover, the dispute between the parties is already subject matter of civil litigation as regular second appeal is stated to be pending before this Court.

In the case of *Yadwinder Singh Versus State of Punjab 2009(3) RCR (Criminal) 245*, this Court, taking into consideration that the petitioner was facing criminal proceedings for the last 10 years; was not a previous

convict; fine was paid by him and had already undergone sentence of more than three months out of total sentence of one year, had reduced the sentence of petitioner to the period already undergone by him.

Hon'ble Delhi High Court in the case of ***Joginder Lal Versus State 1998(3) RCR (Criminal) 192***, wherein the accused was convicted under Sections 420, 467, 468 and 471 IPC, reduced his sentence to the period already undergone by holding that the accused had already undergone substantial period of sentence and it would be quite harsh to direct him to undergo the remaining sentence after 30 years of the incident. Similar view has also been adopted by this Court in ***Criminal Revision No.1707 of 2005*** titled as ***Baldev Ram Versus State of Punjab*** decided on 30.9.2015.

Accordingly, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, though conviction of the petitioner is upheld but the sentence imposed upon him under Section 420 IPC is reduced to the period already undergone by him, however, with no change in the fine clause. The petitioner be released from custody forthwith, if not required in any other case.

With the aforesaid modification in the sentence, the present revision petition stands dismissed.

**December 07, 2016**

Yag Dutt

**(HARI PAL VERMA)  
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No