

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

CRR No. 887 of 2016 (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.

JASPAL SINGH, J.

By virtue of this revision petition, petitioner-Kamaljit Kaur has challenged her conviction and sentence awarded to her vide judgment dated July 16, 2014 passed by the Id. trial court thereby convicting and sentencing her to rigorous imprisonment for one year under Section 420 IPC and to pay fine of ₹500/- and in default of payment of fine to further undergo rigorous imprisonment for 10 days in case FIR No. 78, dated 08.04.2007, Police Station Tanda, and further to order dated February 01, 2016 whereby appeal preferred by her challenging her conviction and sentence has been dismissed while upholding the judgment of conviction and sentence was reduced to 9 months.

2. The instant case has been registered on the basis of

statement of Sucha Singh son of Surain Singh, resident of Ward No.1 Maini, Tanda, District Hoshiarpur, wherein he has unfolded that:-

“he retired from Indian Army in July 2004. That he entered negotiations with accused Kamaljit Kaur for sending his son Charanjit Singh to Spain. That Kamaljit Kaur took them to Kulwant Singh agent. That thereafter on 16.11.2005 ₹50,000/- was paid to accused Kamaljit Kaur in the house at that time his wife was also present and the passport of my son was handed over to accused Kamaljit Kaur. That accused told the balance amount be given to them when his son would reach abroad. That thereafter Kamaljit Kaur told them that half of the amount be given thereafter on 26.11.2005 he paid ₹4 lacs to accused Kamaljit Kaur in the presence of his wife and his sister Surinder Kaur at his house. Thereafter on 28.11.2005 he withdraw ₹1,10,000/- from his bank account and went to Delhi where he paid the said amount to Kulwant singh. The accused purchased \$2000 and gave the same to the son and returned ₹10,000/- That thereafter his son Charanjit Singh was taken to Senegal and was kept there for 10 months but was not sent to Spain. The accused returned ₹2 lacs in village panchayat on 27.10.2006 vide agreement Ex.PW1/B. He even enter another agreement dated 31.07.2006 Ex.PW1/C. That regarding this he filed a complaint to SSP which is Ex.PA. The investigating officer made his endorsement over the above statement and send the same to the police station on the basis of which formal FIR was recorded.”

3. There being a prima facie evidence appearing in the

report under Section 173 (2) Cr.P.C. and the documents exhibited, petitioner was charge sheeted to face trial under Section 420 IPC, to which she did not plead guilty and claimed trial. Accordingly, prosecution was asked to lead evidence to substantiate the charge against her.

4. In order to establish the charge framed against petitioner, prosecution examined as many as 6 witnesses and thereafter closed its evidence.

5. When the incriminating circumstances, appearing in prosecution evidence were put to accused-Kamaljit Kaur for eliciting her explanation as required under Section 313 Cr.P.C., she denied the same and pleaded false implication. She pleaded innocence. However, she did not opt to adduce evidence in her defence.

6. After hearing learned APP for the State as well as learned defence counsel, petitioner was convicted and sentenced under Section 420 IPC as fully reflected in para No.1 of this judgment.

7. Aggrieved against her conviction and sentence, she preferred an appeal before the Id. Sessions Court, which was ultimately dismissed by the Id. Additional Sessions Judge, Hoshiarpur vide order dated February 01, 2016.

8. Disheartened with her conviction by the Id. trial court and dismissal of appeal, she has approached this Court by way of this revision petition.

9. While assailing the impugned judgments of conviction and sentence awarded to her under Section 420 IPC, it has been argued with vehemence by learned counsel for the petitioner that in

fact prosecution has failed to bring home the guilt of the accused under Section 420 IPC as it could not establish the requisite ingredients, which constitute an offence under Section 420 IPC. She has been falsely implicated in this case, at the instance of Sucha Singh and the entire case of the prosecution is based upon related and interested witnesses, who are bent upon to get the petitioner convicted and sentenced by concocting a false story. In fact, neither she ever promised to the complainant to send his son to Spain nor any amount to the tune of ₹4.50 lacs was ever obtained by her. Moreover, the entire case of the prosecution hinges on the testimonies of related witnesses. PW-1 Sucha Singh and PW-2 Gurdeep Kaur are husband and wife and PW-3 is the sister of complainant and PW-5 Charanjit Singh is the son of complainant. There is no independent corroboration to their statements. There is also nothing on the record to suggest that complainant ever parted with such a huge amount of ₹4.50 lacs. Just by concocting a false story that a sum of ₹4.50 lacs has been paid to the petitioner for sending Charanjit Singh to Spain, a false case has been foisted by Sucha Singh-complainant in connivance with the police. Moreover, there is nothing on the record to suggest that an amount of ₹4.50 lacs was ever paid by Sucha Singh to the petitioner. The mere fact that the complainant is retired army personnel and is getting pension does not *ipso facto* mean that he was financially sound and was in a position to part with a huge amount. There is no documentary evidence showing the payment of even a single penny to the

petitioner by Sucha Singh or that she ever agreed to send his son either to Spain or any other foreign country. The prosecution has miserably failed to establish that the petitioner ever committed cheating either with Sucha Singh-complainant PW-1 or his son Charanjit Singh-PW-5 or dishonestly and fraudulently induced them to deliver any amount. Thus, both the courts below have failed while framing and upholding the conviction of the petitioner under Section 420 IPC as well as while imposing sentence, which are otherwise not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant petition.

10. This Court has given an anxious thought to the submission made by learned counsel for the petitioner and has scrutinized the impugned judgments passed by both the courts below but this Court is not agreed with the contention put forth by the learned counsel for the petitioner in view of the established facts available on record.

11. By now, it is pretty settled that the related witness does not necessarily mean or is equivalent to an interested witness and once the presence of related witness is shown to be natural then to doubt his statement would not be a correct approach of law. In fact, Charanjit Singh PW-5 is the son of Sucha Singh-complainant, who intended to go abroad and it was only thereafter, that the petitioner came forward to send him to Spain on receipt of a sum of ₹4.50 lacs, which was paid to her by Sucha Singh in the presence of his wife and sister. So far as, the financial capacity of the complainant is concerned, admittedly he was retired from Army and is drawing

pension. The amount was withdrawn by the complainant on different dates from his bank account, which stands proved from the testimony of PW-4 Arun Kumar, Clerk, Punjab National Bank. He has proved the statement of account Ex. PW-3/A which clearly reflects the withdrawal of amount from the aforesaid bank on different dates in the year 2005. Thus, it cannot be said that the complainant was not in a financial position to part with a sum of ₹4.50 lacs for sending his son abroad. The testimony of Sucha Singh finds full corroboration from the testimony of Charanjit Singh, who can be termed to be the victim. While appearing in the witness box, he has categorically deposed that the accused got arranged his flight in the month of December 2005 with the assurance that he would reach in Spain within 7 days but instead of sending him Spain, he was kept in Senegal South Africa for about 10 months by the accused and ultimately, he was sent back to India. He was neither sent to Spain nor an amount of ₹4.50 lacs was returned/repaid by the petitioner-accused to the complainant-Sucha Singh.

12. It would be pertinent to mention here that the agreements dated April 27, 2006 and July 31, 2006 Ex. PW1/B and PW1/C respectively clinches the entire controversy, which have been executed by the petitioner-accused. Vide agreement, she has admitted the receipt of an amount of ₹4.50 lacs for sending Charanjit Singh to Spain and on her failure to do so, she undertook to return the said amount. These documents fortifies the version unfolded by complainant-Sucha Singh and his son Charanjit Singh as well as the other witnesses examined by the prosecution. From the above

referred documents, it can be safely inferred that the accused has dishonestly and fraudulently induced the complainant to part with a sum of ₹4.50 lacs on the pretext of sending his son to Spain.

13. In the light of what has been narrated above. This Court does not find any illegality, infirmity or impropriety in the findings and conclusion arrived at by the Id. trial court and upheld by the lower appellate court.

14. Thus, this court does not find any reason to meddle with the judgment of conviction and as such the same is upheld.

15. Now, coming to the sentence imposed by the Id. trial court. Though, the petitioner has been sentenced to undergo rigorous imprisonment for a period of one year under Section 420 IPC by the Id. trial court but considering the fact that she is a lady, lower appellate court by taking a lenient view, modify the sentence and reduced one year rigorous imprisonment to rigorous imprisonment for a period of 9 months while maintaining the sentence of fine. Sentence of rigorous imprisonment for 9 months can be said to be absolutely commensurate with the offence committed by the petitioner-accused. Accordingly, this Court also does not find any cogent reason or justification to further reduce the sentence.

16. As an upshot of the aforesaid discussion and finding the instant petition to be devoid of merits, the same is dismissed.

March 28, 2016
sonika

(JASPAL SINGH)
JUDGE