IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Appeal D-372-DB of 2013(O&M)
Date of Decision : November 21, 2017

Shahid Iqbal Bhatti

.....Appellant

VERSUS

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present : Mr. Ranjan Lakhanpal, Advocate
for the appellant.

Mr. Sidakmeet Sandhu, Asstt. A.G., Punjab

T.P.S. MANN, J.

Convict-Shahid Iqbal Bhatti, son of Amir Shahid Bhatti, resident of Pattoke, Hala Road, District Kasoor, Pakistan has filed the present appeal against the judgment and order dated 21/22.1.2013 passed by learned Additional Sessions Judge, Ludhiana.

Vide impugned judgment and order, learned trial Court convicted and sentenced him as under:-

Offences	Sentence (Rigorous imprison-ment) RI	Fine (Rs.)	In default of payment of fine sentence (Rigorous imprisonment) RI
Charge Head No. 5 u/s 420 IPC	3 years	10,000/-	6 months RI
Charge Head No. 6 u/s 420 IPC	3 years	10,000/-	6 months RI
Charge Head No. 7 u/s 420 IPC	3 years	10,000/-	6 months RI
Charge Head No. 10 u/s 419 IPC	2 years	5,000/-	3 months RI
Charge Head No. 11 u/s 182 IPC	6 months	1,000/-	15 days RI
Charge Head No. 13 u/s 12 of the Passport Act, 1967	2 years	2,000/-	1 month RI
Charge Head No. 14 u/s 3 of the Passport (Entry into India) Act, 1920	3 years	10,000/-	6 months RI

All the sentences imposed upon the convict were ordered to run consecutively subject, however, to cap of rigorous imprisonment for 14 years as substantive sentence in view of the provisions of Section 31 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.").

According to the prosecution, on 2.8.2008 SI Pritam Singh, SHO, alongwith other police officials, namely, SI Prem Kumar, ASI Jagtar Singh, ASI Mohammad Zamil, HC Labh Singh No. 553, HC Sukhwinder Singh No. 21, HC Sukhwinder Singh No. 670, HC Sukhwinder Singh No. 257 and CII Harjinder Singh

No. 465 was on patrol duty on government vehicle make Balero bearing No. PB-10-BV-7506 driven by HC Jagtar Singh and for night dominance duty and going from village Gagrha to Pabbian. When the police party reached near Grain Market of Village Pabbian, then a secret informer came there and by taking SI Pritam Singh aside informed him that one Pakistan spy, namely, Shahid Iqbal Bhatti son of Amir Shahid Bhatti, resident of Pattoke, Hala Road, District Kasoor, Pakistan, aged about 30 years, was residing under the assumed name of Dev Raj Sehgal son of Hardev Raj Sehgal, in Hakikat Nagar, Saharanpur, UP having mobile No. 98554-56444 and running business in the name of Punjab On Line in SCO No. 45, First Floor, Surya Complex, Leela Bhawan Market, Patiala. He was having relations with Pakistan Secret Agency ISI and working for the said agency. He was also having relations with other such spies working in Punjab and other parts of India for ISI. They were collecting information regarding Indian Army and other defence installations of the country and sending it to Pakistan Secret Agency ISI after entering without passport and illegally from the border in Punjab State, who would be coming from village Chowki Maan and going to Halwara Airport for doing his work of spy. In case, a naka was laid at canal bridge in Kular, then he could be apprehended and many important documents regarding Indian Army and defence installations could be recovered from his possession. As the information was found to be reliable, SI Pritam Singh prepared ruqa and sent it to Police Station Jagraon for registration of case through Constable Harjinder Singh. Accordingly, FIR No. 192 dated 2.8.2008 under Section 3 of the Official Secrets Act, 1920, Section 14 of Foreigners Act, 1946, Section 12 of the Passport Act, 1967, Section 3 of Passport (Entry into India) Act, 1920 and Sections 419, 511, 123 and 182 of the Indian Penal Code (hereinafter referred to as '**IPC**').

SI Pritam Singh alongwith other police officials then set up a naka on canal bridge in the area of village Kular. SI Tehal Singh, Incharge Narcotic Cell came there for help. One person was apprehended by the police party, who initially disclosed his identity as Dev Raj Sehgal son of Hardev Raj Sehgal. On further interrogation, he disclosed that he was Shahid Iqbal Bhatti son of Amir Shahid Bhatti, resident of Pattoke Hala Road, District Kasoor, Pakistan. From his possession one black bag was recovered and upon search of that bag, one road map of India, photographs of various defence installations and three mobile sets were recovered and all those were taken into police possession. The appellant was formally arrested in the case. Statements of witnesses were recorded at the spot.

It is also the prosecution case that during investigation on 2.8.2008, shop of the appellant in the name of Punjab On Line situated at Leela Bhawan Market, Patiala was searched from where two CPUs, two monitors, one modem and one computer woofer were recovered and taken into possession. From search of the shop, 36 different photographs of military area, 46 other photographs, two photo albums, one road map of Punjab State, one passport of Harpreet Singh, one birth certificate of Dev Raj Sehgal, five blank passbooks, one cheque book of UCO Bank, one cheque book of State Bank of Patiala, income tax PAN card number in the name of Dev Raj Sehgal, one RC of motor cycle bearing No. UP-11R-0708 were recovered and taken into possession. On return to the Police Station, all those articles were deposited in the malkhana.

It is further the case of the prosecution that the appellant while in police custody made disclosure statement on 5.8.2008 that he had kept concealed some certificates of Indian Army, site-plan of Chandigarh, his own documents regarding residence in Pakistan in his shop by affixing the same under the table in Leela Bhawan Market, Patiala. Pursuant to the same, he got recovered the aforementioned articles. During investigation, documents were also collected from the check post of Attari and verified from Military Authorities. After completion of various formalities, challan against the appellant was prepared and presented in the Court.

Copies of documents as relied upon by the prosecution were supplied to the appellant free of costs. The case was, thereafter, committed to the Court of Sessions where he was charge-sheeted for committing the offences punishable under Sections 419, 420, 467, 468, 471, 182, 123 IPC, Section 12 of Passport Act, 1967, Section 3 of Passport (Entry into India) Act, 1920, Section 3 of Official Secrets Act, 1923 and Section 14 of Foreigners Act, 1946 to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twenty witnesses.

PW1 Mohinder Pal, Chief Manager, State Bank of Patiala, Head Office, Patiala produced the record of Account No. 65011666135 in the name of Dev Raj Sehgal. He stated that the accused had opened that account in the name of Dev Raj Sehgal showing his nationality as Indian and occupation as business on 7.11.2006 at address 45, Leela Bhawan Basement, Patiala. The accused was introduced by Manish Kumar who was holding account in the bank. This witness proved on record passbook Ex.PA, supplementary passbook Ex.PB, information sheet signed by the accused Ex. PD, ATM Card Ex. P2. He further stated that accused supplied form of driving licence dated 28.2.2006 and its attested copy Ex. PG signed by the accused. He proved attested copy of letter handed to police Ex. PH.

PW2 Jagmohan Lal Tandon, Assistant Manger, State Bank of Patiala, DCW Branch, Patiala deposed that he was witness to opening of new account in the name of one Paramjit Kaur wife of Kishan Kumar of Indian Nationality, who was introduced by Somti Devi, another account holder in their bank. He proved on record account opening form of Paramjit Kaur Ex.PJ, passbook Ex.PK and letter in that regard Ex.PL. The Bank passbook was recovered from the possession of the accused.

PW3 Manish Kumar son of Nand Lal deposed that he was running Cyber Cafe at SCO 42, Leela Bhawan, Patiala, since 2006 whereas the accused was running a shop in the name of Punjab On Line in Surya Complex at SCO No. 45, Leela Bhawan, Patiala, under fake name of Dev Raj Sehgal. He stated that as accused was dealing in computer work and used to come to his Cyber Cafe as customer, as such, the accused introduced himself as Dev Raj Sehgal and he had got acquainted with him 2½/3 years prior to registration of case against the accused. He also deposed that on 07.11.2006 accused came to him and requested to introduce him in State Bank of Patiala as he wanted to open an account. He knew him as customer in Cafe and he, accordingly, accompanied accused on 7.11.2006 and introduced him in the

Bank. He identified his signatures as introducer at point Mark A on Ex. PA. He also identified signatures of the accused appended in his presence at points Mark A to F. He also identified his own signatures at point Mark G on Ex. PA. Thereafter, on 2.08.2008, he came to know the name of accused as Shahid Iqbal Bhatti son of Amir Shahid Bhatti, resident of Pattoke, Hala Road, District Kasoor, Pakistan. He further stated that the accused had cheated him and other persons of their locality by assuming false name as Dev Raj Sehgal and concealing his real name and nationality.

PW4 Jagdev Singh, Senior Assistant, office of RTO, Saharanpur (U.P.) stated that he brought the summoned record regarding motorcycle bearing registration no.UP-11R- 0708 which was in the name of Dev Raj Sehgal son of Hardev Raj Sehgal, resident of V-I, Haqiqat Nagar, Saharanpur, and the RC was issued on 27.06.2006. He identified the signatures of Sh. Raj Kumar Srivastav, Registration Inspector, and proved it as Ex.PW4/A. He stated that at the time of preparation of RC, Dev Raj Sehgal produced copies of sale certificate Form No. 21 dated 29.5.2006, Ex.PW4/B, receipt bill No. 44 Book No.147 Ex.PW4/C issued by Davindra Autos, Link Road, Saharanpur, Motor Insurance Cover note Ex.PW4/D, ration card No. 187425 produced by Dev Raj Ex.PW4/E, form No. 20 Ex.PW4/F, invoice Ex.PW4/G, copy of endorsement of office by HDFC Bank Ltd.

Ex.PW4/H, police request Ex.PW4/J for taking said documents with endorsement by ARTO (Admn.) A.K. Aggarwal Ex.PW4/K, driving licence bearing No.D-5688/06 issued on 28.8.2006 by Rajesh Kumar Sri, Regional Inspector (Technical), Office of RTO, Saharanpur Ex. PW4/L which was valid for motorcycle and LMV and police request Ex.PW4/M alongwith endorsement Ex.PW4/N. During investigation, his statement was recorded by the police. He also stated in his cross-examination that neither any complaint was got received by their department nor case was registered by them and their department lateron came to know regarding cheating the department by impersonation as Dev Raj Sehgal, as such, the department lodged FIR, trial of which was pending in the Court at Saharanpur.

PW5 Syed Ahmed, Clerk, Municipal Corporation, Saharanpur had brought the record regarding issuance of birth certificate in the name of Dev Raj Sehgal. He deposed that accused had applied for issuance of birth certificate and had submitted form in the shape of affidavit Ex.PM alongwith affidavit Ex.PN, copy of driving license and copy of PAN Card Ex.PQ. On the basis of those documents, Inspector Jatinder Singh made recommendation to Medical Officer, Health vide endorsement Ex.PM/1 for issuing birth certificate and resultantly, Medical Officer, Health vide endorsement Ex. PM/2 issued directions for supplying birth certificate to the accused. He proved birth certificate, Ex.PR, issued to the accused under assumed name of Dev Raj Sehgal. He also brought the register pertaining to entries regarding issuance of birth certificate and vide Serial No.3740 birth certificate was issued to the accused in the name of Dev Raj Sehgal born on 06.02.1980 with mother's name Saraswati Devi at address V-I, Haqiqat Nagar, Saharanpur. He stated that after coming to know about this fraud played by the accused on the authorities under the assumed name of Dev Raj Sehgal from the news published on 22.1.2008 in 'Dainik Jagran', the said entry standing at Sr. No.3740 was cancelled on 29.9.2008 by the order of ADME and birth certificate Ex.PR, stood cancelled which was issued under the signatures of Dr.J.P.Chauhan. He also proved the copy of the said register Ex.PS bearing the cancellation entry. This witness also deposed that a criminal case was got registered by their department against the accused.

PW6 Madan Singh Chauhan, Manager, UCO Bank, Saharanpur produced the record of bank regarding opening of account in the name of Dev Raj Sehgal and in the name of business concern M/s Raj Enterprises India at the address of V-I, Haqiqat Nagar, Saharanpur. He stated that the accused submitted copies of ration card and PAN card. This witness proved on record passbook of Bank Ex.P1, account opening forms Ex.PV and Ex.PX, specimen signatures sheet, Ex.PZ and front page of copy of passbook of account No.01190019158, which was opened by the accused with State Bank of India, Saharanpur.

PW7 Leela Singh, Record Keeper, State Bank of India, Court Road, Saharanpur stated that the accused opened one saving account bearing No.01190019158 in the assumed name of Dev Raj Sehgal. This witness proved on record the aforesaid account opening form alongwith photograph of accused Ex.PAA signed as Dev Raj Sehgal, affidavit submitted by way of accused Ex.PBB, Form No. 60 Ex.PCC depicting that one Aliyas Johar had verified the accused as Dev Raj Sehgal, another affidavit as Ex.PDD and copy of electricity bills submitted by the accused Ex.PEE and passbook of the Bank Ex. PFF. He deposed that the accused had wrongly and fraudulently got opened account in their Bank by furnishing false name.

PW8 Pankaj Chugh son of Madan Lal Chugh, resident of Kishanpura, Saharanpur identified the photograph of the accused on the copy of account opening form Ex.PV and stated that the accused came to him at his medical store shop for purchasing some medicines once or twice. The accused was also doing computer repair work of UCO Bank and wanted to open an account in the name of his firm Raj Enterprises India, as such, he put his signatures being introducer and pointed out his signature at Mark A on account opening form Ex.PX. The Bank Manager Shree Pal had called upon him for signing as introducer of accused and at his instance, he appended his signatures being introducer. He did not know the accused personally and lateron, came to know that the accused is Shahid Iqbal Bhatti, who assumed fake name of Dev Raj Sehgal and he identified him in the Court.

PW9 Manjit Singh son of Davinder Singh, resident of V-I, Haqiqat Nagar, Saharanpur stated that no person by the name of Dev Raj Sehgal ever resided in his house. He stated that the accused was running a shop on the back side of Haqiqat Nagar and had wrongly given his address to different offices for getting documents issued in his favour. This witness further stated that his house is owned by him and he never kept any tenant in his house. So, the accused had mentioned wrong address in every document submitted by him in various offices and every public office. He categorically stated that the accused had cheated all the authorities by wrongly giving his address. He never saw the accused earlier except in the Court.

PW10 Sanjay Futela son of Krishan Chand, resident of Haqiqat Nagar, Saharanpur, who had allegedly introduced the accused on the application for taking birth certificate from the office of Municipal Corporation, Saharanpur stated that his signatures had been forged by the appellant and he produced copy of report of Forensic Science Laboratory, Agra (U.P.) Ex.PGG that his signatures on the form and specimen signatures were not tallying with each other. He also deposed in his cross-examination that neither he made any complaint nor any FIR registered against the accused. He further stated that the accused had not forged his signatures or stamps in his presence as it was police, which told him regarding forgery of signatures on Ex.PM/3.

PW11 Inspector Prem Kumar stated that on 2.8.2008, he was posted in Police Station, Jagraon, as Sub Inspector and was member of police party headed by SHO Pritam Singh, which raided the business premises of accused in the name of M/s Punjab On Lines, Shop No. 45, Surya Complex, Leela Bhawan Market, Patiala, and at that time accused was in police custody. From the search of the shop of the accused, two CPUs make Intel inside Cellrone, Ex.P10 & Ex.P11, two monitors make LG and Phillips, Ex.P12 and Ex.P13, one modem, Ex.P14, one woofer Ex.P15 were recovered and taken into possession. He stated that sealed parcels were prepared by SHO Pritam Singh with his seal bearing impression 'PS' and after use, the seal was handed over to him. All those articles were taken into police possession vide memo Ex.PGG. This witness further stated that 36 photographs belonging to Military installations (Ex.P16 to Ex.P51). 46 other photographs contained in polythene bag Ex.P52; two albums Ex.P53 and Ex.P54; one map of Punjab Ex.P55; one passport of Harpreet Singh Ex.P56; one birth certificate Ex.PR in the assumed name of accused Dev Raj Sehgal; four passbooks of different Banks issued in the assumed name of accused Dev Raj Sehgal Ex.P1, Ex.PFF, Ex.PB and Ex.PC; one passbook Ex.P57 issued in the name of Paramjit Kaur; PAN card Ex.P58; one camera make Kodak KV-10 Ex.P59; three ATM cards Ex.P60 to Ex.P62 issued in the name of Dev Raj Sehgal; one RC Ex.PW4/A in the name of Dev Raj Sehgal of motorcycle bearing registration No.UP-11R-0708 were recovered from the shop of accused and taken into possession vide memo Ex.PHH; and SI Tehal Singh attested the same and lateron, those documents/articles were deposited with MHC Sukhwinder Singh. He also deposed that again on 5.8.2008, he was present with the police party headed by SHO Pritam Singh in connection with investigation of this case alongwith SI Tehal Singh, Incharge, Anti Narcotic Cell, Ludhiana (Rural). Accused was interrogated by SI Pritam Singh in their presence, who made disclosure statement that he had kept concealed some secret documents relating to Indian Army, map of Chandigarh and genuine record of his particulars as Pakistan National duly pasted underneath the table, which was lying in his shop No.45 at First Floor of Leela Bhawan, Patiala. He proved on record disclosure statement Ex.PJJ and slip having biodata of the accused Ex.PNN. He also stated that after recovery, all those documents were taken into possession vide recovery memo Ex.PQQ, which was attested by him and SI Tehal Singh.

PW12 Manish Priyadarshi, Foreigners Regional Registration Officer, Amritsar proved on record earlier visa granted to the accused when he came to India on the basis of passport No. KD330620 on 24.3.2005 through ICP Attari Rail. He returned to Pakistan on 31.3.2005. He proved coloured computer print out of travel documents Ex.PW12/A and Ex.P12/B alongwith visa application form of Mohd. Shahid Iqbal Ex.PW12/C.

PW13 HC Avtar Singh testified that he had taken the special report and handed over the same to the Ilaqa Magistrate.

PW14 ASI Ravinderjit Singh proved the FIR Ex.POO, which was registered by him on receipt of ruqa from SI Pritam Singh.

PW15 SI Jagtar Singh, who was also a member of police party headed by SI Pritam Singh, which had laid naka while on patrolling duty on 1.8.2008, deposed that in his presence, SI Pritam Singh received secret information at 11.30 p.m. regarding accused Shahid Iqbal Bhatti and in his presence, recovery was effected and ruqa was sent to the Police Station for registration of case. In the meantime Satnam Singh, DSP, alongwith police force and SI Tehal Singh, Incharge Anti-narcotic Cell, Ludhiana (Rural) also came there. Accused came from Village Kular side and reached the bridge and he was called by SI Pritam Singh, but he tried to flee from the spot towards Eastern side but was apprehended with the help of other police party. Initially, he disclosed his name Dev Raj Sehgal, but lateron he revealed his name as Shahid Iqbal Bhatti, resident of District Kasoor, Pakistan. He was carrying black bag and upon search of that bag, one scaled map of India and 25 photographs of the defence installations were recovered. Three mobile sets were also recovered from the bag of accused and from his personal search, Rs. 280/-, one telephone diary, one black colour purse containing few visiting cards were also recovered. He also deposed that he signed the police documents as a witness. He proved the black bag Ex.P64, three mobile sets Ex.P65 to Ex.P67, diary Ex.P69 alongwith visiting cards and photographs Ex.P70 to Ex.P94. He identified the accused in the Court.

PW16 Harpreet Singh son of Darshan Singh, resident of Ahmedgarh, District Sangrur stated that he was running Cyber Cafe and Computer Hardware Shop under the name & style of

Osho Cyber Cafe & Infotech Computers at Leela Bhawan, in 2007. The accused was also running computer shop in the name of Punjab Online Dot Com and he was known in the locality as Dev Raj Sehgal. He was running that shop for several months and also doing the computer business. He stated that his passport expired in the year 2002. He talked with the accused, who ensured to get it renewed from the authorities. So, he handed over the passport to the accused, but he had not got it renewed despite demands and also did not return it to him. Lateron, he came to know that the accused is Pakistani national and his name is Shahid Iqbal Bhatti. He also deposed that his passport Ex.PTT was recovered from the possession of the accused. This witness also identified the accused in the Court.

PW17 HC Gurcharan Singh, who was posted as AMHC, Police Station Sadar, Jagraon on 2.8.2008, stated that SI Pritam Singh deposited with him two CPUs of computer, one modem, 79 photographs, 2 albums, 3 mobile sets, 2 sim cards, 2 monitors, one woofer, one camera, one cheque Book of State Bank of Patiala, birth certificate of accused, one RC of motorcycle bearing registration no. UP-11R-0708, one bag of black colour, one purse containing Rs. 280/- and one map of Punjab. Thus, he is a formal witness, who deposed only regarding deposit of case property by SI Pritam Singh, Investigating Officer and he kept the same in his safe custody.

PW18 Paramjit Kaur wife of Sanjay Kumar, resident of Patiala, did not support the prosecution version and stated that she was having account in State Bank of Patiala. She had lost her passbook and got prepared new passbook. However, lateron she came to know that her passbook had been recovered from the accused. She also deposed that neither she had handed over the passbook to the accused nor the same was recovered by the police from the accused in her presence. Accordingly, she was declared hostile and even in her cross-examination, she failed to support the prosecution version.

PW19 Inspector Pritam Singh, Investigating Officer of this case had narrated the whole story of the prosecution and stated that he headed one police party for patrolling duty and for night dominance. On 1.8.2008 he received a secret information regarding Pakistani spy Shahid Iqbal Bhatti son of Amir Shahid Bhatti, resident of Pattoke, Hala Road, District Kasoor, Pakistan by changing his identity to Dev Raj Sehgal son of Hardev Raj Sehgal and was running a shop in the name of "Punjab Online" at Surya Complex, Patiala who was in touch with ISI Secret Agency of Pakistan and other agents of ISI, who entered and operating in Punjab and India without any passport by illegal means. Upon that information, he scribed ruqa Ex. P19/A upon which, FIR was registered for various offences of IPC and of the Officials Secret Act, Foreigner Act, Passport Act, 1967 Passport (Entry into India) Act, 1920 etc., which he sent through Constable Rajinder Kumar. Thereafter, he laid a 'naka' at place disclosed by informer where SI Tehal Singh came and joined in 'naka' party. Lateron DSP Satnam Singh also came there. After sometime, when the accused came on foot from village Kular, and crossed the canal bridge, he was called in the light of torch, but he tried to run towards his right side and was apprehended by him with the help of other police officials. On inquiry, he disclosed his name as Dev Raj Sehgal, resident of Haqiqat Nagar, Saharanpur. His bag was taken from him in which various incriminating articles were recovered. He deposed regarding the entire investigation part of the case, recovery of articles from the possession of the accused as stated by PW15 SI Jagtar Singh and he also recorded the statements of various witnesses. On completion of investigation, he prepared the challan against the accused and submitted the same in the Court for trial. He also identified the accused in the Court.

PW20 Colonel Vineet Mittal deposed that he was working as General Staff Officer Grade I Intelligence at Head Quarter, Western Command, Chandi Mandir. He received letter from SSP, Ludhiana (Rural) alongwith documents, i.e., list of units/appointments, order of battle, photographs, sketches and layouts and the copies of the same are Ex.PKK, Ex.PLL, Ex.PW20/A, Ex.PW20/B, Ex.PW20/C, Ex.PW20/D, Ex.PW20/E, Ex.PW20/F and Ex.PMM, organization map Ex.PW20/G, route plan Ex.PW20/H, organization plans Ex.PW20/I and Ex.PW20/J and photograph of defence equipment Ex.PW20/K. He categorically stated that those documents were classified, confidential and restricted. However, those documents were relating to the establishment of defence installations and were very important, which an enemy country could use against India at the time of hostilities.

When examined under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded his false implication. According to him, he came to India on valid visa in the year 2005. While in India, he fell in love with one Sapna Kumari and promised to marry her. Due to that, he requested Indian Embassy for visa but the same was denied to him. Accordingly, he reached Nepal and, thereafter, reached India and stayed at Saharanpur. No offence was committed by him under the jurisdiction of Punjab State. He also stated that he was not a spy and did not commit any offence. He also tendered in evidence certified copy of judgment Ex.D1 alongwith other documents Exs.D2 to D5.

After hearing learned counsel for the parties and on going through the record, learned trial Court came to the conclusion that the appellant after concealing his identity and nationality and assuming the name of Dev Raj Sehgal, cheated Municipal Authorities for preparing birth certificate in the name of Dev Raj Sehgal son of Hardev Raj Sehgal for procuring PAN card and driving licence. He was identified in the office of Municipal Corporation, Saharanpur by PW10 Sanjay Futela, Municipal Councillor. He used the birth certificate for opening bank accounts at Saharanpur and Patiala knowing fully well that it was not genuine. However, as he already stood convicted and sentenced for producing false birth certificate and also for other related offences, he could not be tried and convicted second time for the same offences. Hence, he was acquitted of the charges framed against him under Charge Head Nos. 1, 2, 3, 4 and 16. He was also acquitted of the charge framed against him under Charge Head No. 8 of cheating and dishonestly inducing income tax authorities to issue PAN card on his assumed and false name Dev Raj Sehgal as no proper investigation was conducted nor any evidence brought on record as to how he had procured PAN card and what was his role in getting such card issued and also of the Income Tax Authorities and the officials in this regard. Further, as Arjan Desh Bhagat, who had given the shop on rent to the appellant at Saharanpur, was not joined in the investigation nor he was examined as witness at any stage, it could not be said that the appellant cheated said Arjan Desh Bhagat and, accordingly, he was also exonerated of the Charge Head No. 9. Similarly, for the Charge Head No.12 that he had collected sensitive information regarding Indian Armed Forces and sensitive places and transmitting the same to Pakistan, concealing his identity and residing illegally in India with a view to wage war against the Government of India and intention of such concealment was to facilitate the waging of such war against India and, thus, committed the offence punishable under Section 123 IPC, the prosecution was under a duty to seek prior permission from the Government as per the provisions of Section 196 Cr.P.C. and such sanction being necessary but not brought on record, he was absolved of the said charge as well. The trial Court also acquitted the appellant of the Charge Head No. 15 relating to commission of offence under Section 3 of the Official Secrets Act, 1923 as Sh. Mukhtiar Singh, PPS, DSP, Jagraon, District Ludhiana was authorised to make complaint for the offence under Section 3 of the Official Secrets Act, 1923 yet no such complaint had been annexed with the challan nor original order passed by Varinder Kumar, Under Secretary (Home), Government of India and letter addressed to Principal Secretary

(Home), Government of Punjab, Chandigarh had been placed on record nor any witness cited in this respect nor also any evidence produced in this respect which was necessary for the trial Court to take cognizance. However, he was convicted and sentenced for the charges at Charge Head Nos. 5, 6, 7, 10, 11, 13 and 14.

This Court has heard learned counsel for the parties and minutely scanned the evidence alongwith record with their able assistance.

Charge Head No. 5 pertained to the act of the appellant of cheating and dishonestly inducing Motor Vehicle Department and Transport Department, Saharanpur to deliver/issue RC of motor cycle bearing No. UP-11R-0708 in his favour under an assumed name and nationality and thereby committed the offence under Section 420 IPC. PW4 Jagdev Singh, Senior Assistant, Office of RTO, Saharanpur had proved the entry regarding issuance of registration certificate of motorcycle in question and, thus, it was the appellant, who had cheated the Motor Vehicle Department and Transport Department making him liable for committing the offence punishable under Section 420 IPC.

Charge Head No. 6 related to the act of the appellant in cheating and dishonestly inducing the Manager, State Bank of Patiala, Branch Leela Bhawan, Patiala to issue ATM card to him in his favour, making him liable for committing the offence under Section 420 IPC. Similarly, Charge Head No. 7 was framed against the appellant for cheating and dishonestly inducing the Manager, State Bank of Patiala, Branch Leela Bhawan, Patiala and UCO Bank, Saharanpur and State Bank of India, Saharanpur to issue account numbers, ATMs and cheque books in the assumed named of the appellant i.e. Dev Raj Sehgal. The prosecution had examined PW1 Mohinder Pal, Chief Manager, State Bank of Patiala, who proved record regarding opening of bank account by the appellant in State Bank of Patiala under the assumed name of Dev Raj Sehgal and false nationality. His statement is duly corroborated by PW3 Manish Kumar, who proved that his signatures were taken being introducer as he was neighbour of the appellant in the business complex. PW6 Madan Singh Chauhan, Manager, UCO Bank, Saharanpur proved documents regarding opening of current account in the UCO Bank, Saharanpur by the appellant under the assumed name of Dev Raj Sehgal and false nationality. PW7 Leela Singh, Record Keeper, State Bank of India, Court Road, Saharanpur produced the documents relating to opening of account in State Bank of India by the appellant under the assumed name of Dev Raj Sehgal and under false nationality. The evidence of opening bank account in UCO Bank is further corroborated by PW8

Pankaj Chugh, who stated that the appellant used to visit him for purchasing medicines in his medical shop and he had introduced the appellant in UCO Bank as he himself was holding an account in the said bank and also at the instance of one Siri Pal, Manager of UCO Bank. PW12 Manish Priyadarshi testified that he was working as Foreigners Regional Registration Officer at Amritsar and proved documents pertaining to earlier application for visa by Mohd. Shahid Iqbal and entry of the appellant in India from 24.3.2005 till 31.3.2005 which proved that his actual name was Mohd. Shahid Iqbal son of Mohd. Amir Shahid Bhatti, resident of 1/A, Shadman Colony, Kashmir Chowk, Halla Road, Lahore (Pakistan). Thus, it is sufficient to hold that the appellant had assumed the name of Dev Raj Sehgal.

The appellant during his examination under Section 313 Cr.P.C. had clearly admitted that he had come to India in the year 2005 on valid visa and while in India, he came across Sapna Kumari whom he promised to marry and, accordingly, he had requested the Indian Embassy in Pakistan for fresh visa but it was denied to him. He then reached Nepal and, thereafter, entered India and started staying at Saharanpur. From such stand taken by the appellant, it is made out that he had forged and fabricated documents to conceal his actual identity and staying in India under the assumed name as Dev Raj Sehgal.

However, in support of his plea, he did not examine any evidence. Atleast, he could have produced Sapna Kumari. At the same time, he had not taken permission to settle in India due to his marriage with Sapna Kumari. Under these circumstances, no fault can be found with the approach of the learned trial Court in holding the appellant guilty of the Charge Head Nos. 6 and 7.

Charge Head No. 10 was framed against the appellant for dishonestly cheating Paramjit Kaur and Manish Kumar by concealing his real identity and assuming false name as Dev Raj Sehgal and by such impersonation he dishonestly cheated RTO, Saharanpur, making him liable for committing the offence under Section 419 IPC. PW18 Paramjit Kaur did not support the prosecution version. She only stated that she had lost her passbook for the account maintained in State Bank of Patiala, Branch DCW, Patiala and got issued new passbook from the bank. She denied about the appellant contacting her or cheating her. As regards the charge of cheating Manish Kumar, who stepped into the witness box as PW3 and deposed that being a neighbour in the market where they were running separate business and the appellant was visiting his Cyber Cafe by posing himself as Dev Raj Sehgal and an Indian National and, accordingly, on his request, he went to State Bank of Patiala as the appellant wanted to open an account there and the appellant cheating him by obtaining introduction as Dev Raj Sehgal. Therefore, the appellant has been rightly convicted and sentenced for the Charge Head No.10.

Charge Head No. 11 was framed against the appellant for concealing his real identity and assuming false name of Dev Raj Sehgal with intent to take benefits from various public servants. Hence, he had committed an offence punishable under Section 182 IPC.

Charge Head No. 13 was framed against the appellant for committing the offence punishable under Section 12 of the Passport Act, 1967. From the evidence available on the record, it stands established that the appellant provided false information to the Municipal Authorities, Saharanpur and also to the Transport Authorities for getting issued RC of motor cycle and for obtaining bank account and getting ATM card issued. The appellant despite being a Pakistan National had been travelling throughout India without obtaining proper visa and, thus, committed the offence punishable under Section 12 of the Passport Act.

Charge Head No.14 was framed against the appellant as he was not issued visa to remain in India. PW12 Manish Priyadarshi had deposed that the application filed by the appellant for second time visa stood rejected by the competent authority. At the same time, the appellant himself admitted about illegally entering into India from the side of Nepal and, therefore, violated the provisions of Section 3 of the Passport (Entry into India) Act, 1920.

Learned counsel for the appellant has submitted that the offences for which the appellant stood charged, were allegedly committed at Saharanpur and regarding those charges he already stands convicted and sentenced and, therefore, he cannot be tried once again by the Court at Ludhiana. It is also submitted that Arjan Desh Bhagat whom the appellant had allegedly cheated by taking his shop on rent, was neither joined in the investigation nor cited as a witness. Even Paramjit Kaur, whose passbook pertaining to her account in State Bank of Patiala was allegedly recovered from the possession of the appellant while stepping into the witness box as PW18 did not support the prosecution case. She rather stated that she had lost her passbook and got a new one. It is also submitted that no proper opportunity was given to the appellant during his examination under Section 313 Cr.P.C., in order to explain the material collected by the prosecution against him. It is also submitted that the sentences of imprisonment imposed upon the appellant for the various offences are on the higher side. In any case, all the substantive sentences of imprisonment ought to have been made to run concurrently instead of consecutively.

Learned State counsel has submitted that the prosecution has led cogent and convincing evidence so as to prove the charges against the appellant. It is also submitted that the sentences of imprisonment imposed upon the appellant under the various Charge Heads were commensurate with the crime committed by him and, therefore, do not call for any interference. It is also submitted that the learned trial Court was justified in directing the substantive sentences of imprisonment to run consecutively instead of concurrently.

As regards the territorial jurisdiction of the trial Court, suffice it to state that the various offences which were committed by the appellant at Saharanpur, he already stood tried and convicted and, accordingly, in the present case, he had been exonerated for the Charge Heads No. 1, 2, 3, 4 and 16. He has been held guilty for committing the various offences within the territorial jurisdiction of trial Court and, therefore, it can not be said that the trial at Ludhiana by the learned trial Court amounted to double jeopardy.

The appellant was charged for committing the offence under Section 419 IPC of cheating Paramjit Kaur and Manish Kumar. It is true that PW18 Paramjit Kaur did not support the prosecution case. She only stated that she had lost her pass book for the account maintained by her in State Bank of Patiala, Branch DCW, Patiala and got issued new pass book from the Bank. At the same time, PW3 Manish Kumar deposed that being a neighbour in the market where they were running separate businesses and the appellant was visiting his Cyber Cafe by posing himself as Dev Raj Sehgal and an Indian National and, accordingly, on his request, he went to State bank of Patiala so as to introduce the appellant for opening an account there. As such, no benefit of the factum of PW18 Paramjit Kaur in not supporting prosecution version can be extended to the appellant for exonerating him of the offence under Section 419 IPC especially when PW3 Manish Kumar supported the prosecution case for the said charge.

For cheating one Arjan Desh Bhagat of Saharanpur in order to induce him to give his shop to the appellant on rent, he was charged by the learned trial Court. However, he was neither joined in the investigation nor examined as a witness at any stage. Accordingly, appellant stood exonerated of the said charge i.e. Charge Head no. 9. At the same time, the exoneration of the appellant does not mean that he ought to have been acquitted of all the charges framed against him.

In view of the above, no case is made out for any interference in the conviction of the appellant under the various charges. At the same time, the substantive sentences of imprisonment imposed upon the appellant under the various charges are commensurate with the crime committed by him. At the same time, this Court finds that the trial Court has directed that the substantive sentences of the imprisonment shall run consecutively subject, however, to the cap of rigorous imprisonment for 14 years, as per the provisions of Section 31 Cr.P.C. The appellant has also filed CRM 36148 of 2014 for ordering the various sentences awarded to him under different heads to run concurrently. All the offences for which he stands convicted and sentenced pertain to obtaining registration certificate and identity papers besides opening bank accounts. Further, he had entered India without obtaining any valid visa and lived in India under an assumed name after getting prepared false identity papers, opening accounts in banks and also obtaining registration certificate for Motorcycle. For these reasons, the various substantive sentences of imprisonment imposed upon him for the offences under the IPC can be made to run concurrently. Similarly, substantive sentences of imprisonment under Section 12 of the Passport Act, 1967 and under Section 3 of the Passport (Entry into India) Act, 1920 can be ordered to run concurrently. However, the substantive sentences of imprisonment under the Passport Act, 1967 and the Passport (Entry into India) Act, 1920 would start running after he completes the substantive sentence of three years for committing the offences under the Indian Penal Code, meaning thereby, that the appellant shall undergo rigorous imprisonment for 3 years in all for the offences under the provisions of the IPC in the first instance and once, his said substantive sentence of imprisonment is completed, he shall undergo rigorous imprisonment for 3 years in all for the offence under Section 12 of the Passport Act, 1967 and under Section 3 of the Passport (Entry into India) Act, 1920.

Resultantly, the conviction and sentences of the appellant for the various offences, as recorded by the trial Court are upheld. The substantive sentences of imprisonment for Charge Head No. 5 under Section 420 IPC, Charge Head No. 6 under Section 420 IPC, Charge Head No. 7 under Section 420 IPC, Charge Head No.10 under Section 419 IPC and Charge Head No. 11 under Section 182 IPC shall run concurrently. Similarly, the substantive sentences of imprisonment for Charge Head No. 13 under Section 12 of the Passport Act, 1967 and Charge Head No. 14 under Section 3 of the Passport (Entry to India) Act, 1920 shall run concurrently. However, the substantive sentences of imprisonment for Charge Head No. 13 under Section 12 of the Passport Act, 1967 and Charge Head No.14 under Section 3 of the Passport (Entry into India) Act, 1920 shall run consecutively with the substantive sentences of imprisonment for Charge Head No. 5 under Section 420 IPC, Charge Head No. 6 under Section 420 IPC, Charge Head No. 7 under Section 420 IPC, Charge Head No. 10 under Section 419 IPC and Charge Head No. 11 under Section 182 IPC.

In order to be more clear, the substantive sentences of imprisonment imposed upon the appellant for the Charge Heads No. 5, 6, 7, 10 and 11 shall run concurrently and he shall be required to undergo rigorous imprisonment for 3 years only. Once, he completes the said sentence, he will be required to undergo rigorous imprisonment for 3 years under the Charge Heads No. 13 and 14.

The sentences of fine under all the Charge Heads alongwith their default clauses are maintained.

The appeal i.e. Criminal appeal D-372-DB of 2013 and CRM 36148 of 2014 are, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

November 21, 2017 **(MAHABIR SINGH SINDHU)**
ajay-1 **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No