IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-25650 of 2017 (O&M)
Date of Decision: July 19, 2017

Anil Kumar Bhatia and others

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sanjeev Singh Thakur, Advocate for the petitioners.

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INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing the order dated 25.05.2017 passed by learned Addl. Sessions Judge, Fatehabad, vide which revision petition filed by the complainant against the order dated 14.11.2014 passed by learned Sub Divisional Judicial Magistrate, Tohana discharging the petitioners, was partly allowed.

I have heard learned counsel for the petitioners and have gone through the record.

From the record, I find that FIR has been registered on the basis of the order of the Court passed on the application under Section 156(3) Cr.P.C. The brief facts of the case as noted in the order dated 14.11.2014 passed by learned SDJM, Tohana, are as under:-

"2. Brief facts of the case of prosecution are that the complainant Gurtej Singh was in need of tourist Visa for himself, wife and son Fateh Singh for going to United States of

America. For that purpose, he applied for the same in the years 2008 and 2009 respectively but the same could not be sanctioned to him. Once the accused no.1 Anil Kumar Bhatia who was resident of Tohana met the complainant at Railway Station, Tohana and asked him to contact the accused no.3 Rajesh Kumar Negi with whom he was working for getting Visa etc. In October 2009, the complainant along with his father came at the shop of accused no.1, where the accused no.2 was already present and they both i.e. accused no.1 and 2 assured the complainant to send them to America and for this purpose, they would have to talk with accused no.3. The accused no.1 talked with accused no.3 on telephone and thereafter demanded Rs.18,30,000/- for sending them abroad. Believing on the version of accused, on 6.10.2009, the complainant gave Rs.30,000/- to accused no.1 and 2 along with three passports on the demand of accused no.1 and 2 for the purpose of applying Visa. On 12.11.2009, the accused no.1 took the complainant, his wife and son Fateh Singh to Delhi, where they met the accused no.3 through accused no.1. The accused no.2 stayed them in a hotel and some formalities were completed. The accused no.1 to 3 stated that their Visa has been sanctioned. They showed the Visa to complainant and demanded Rs.15 lacs from him. The complainant asked the accused to give the amount to them at Tohana. Thereafter, the complainant along with his family returned home from Delhi. On 14.11.2009, the complainant along with his father had made the payment of Rs.15 lacs to the accused. The accused assured the complainant to send them to America within a week. Thereafter, the accused demanded Rs.50,000/- from the complainant on the pretext that their tickets have been booked, regarding which a mail has also been sent through accused no.3. The complainant along with his father came to the shop of accused no.1 and 2, where the accused no.1 was not found present and accused no.2 had showed the e-mail regarding booking of their tickets on his computer and had asked for Rs.50,000/-. The accused no.1 talked with the complainant on telephone and asked him to give Rs.50,000/- to his son Vishal on the pretext that they had to fly on 22.11.2009 for America. Upon this, the complainant gave Rs.50,000/- to the son of accused no.1 namely Vishal in presence of his father. On 18.11.2009 at about 9-10 AM, the complainant received a call from accused no.3 whereby accused no.3 disclosed that their passport and Visa have been confiscated by Delhi Police and he (accused no.3) has been booked in a criminal case and they (complainant party) have to wait for some time, for going to America. Thereafter the accused kept on avoiding the matter on one pretext or the other and all the story concocted by the accused was found false on enquiry. Later on, whenever the complainant contacted the accused and asked for the return of his amount and passports, then they denied to have received the amount in question and passports from the complainant.

Thus, in this way the complainant was cheated by the accused. So a complaint in this regard was made with the police, which led to the registration of the case in hand."

Learned SDJM, Tohana, after discussing the record in detail, found that no case is made out against the accused. A revision was filed by the complainant before the Court of Session and learned Addl. Sessions Judge, Fatehabad partly allowed the revision vide impugned order dated 25.05.2017 by holding that from the final report under Section 173 Cr.P.C. and other documents on the file, it is prima facie proved on the file that accused in conspiracy with each other had committed the offence punishable under Sections 420, 506 and 120-B IPC.

I have gone through the impugned order dated 25.05.2017 as well as record of this case. First of all, I find that at the time of framing the charge, the Court is to see whether any prima facie case is made out from the final report under Section 173 Cr.P.C. or not by perusing the statements recorded under Section 161 Cr.P.C., FIR under Section 154 Cr.P.C. and documents attached with the file. At this stage, the Court is not to weigh the evidence.

Learned counsel for the petitioners argued that there is no documentary evidence to prove the payment of huge amount to the accused for sending the complainant side to America etc. For framing of the charge, it is nowhere mandatory that every fact must be supported by documentary evidence. The oral statements of the witnesses are as good as documentary evidence. The oral statements, at the time of framing of the charge, cannot be ignored that it is not supported by documentary evidence. It is for the trial Court to determine on the basis of the evidence, whether oral statements are believable or not. At the time of framing of the charge, the Court is only to see whether prima facie case is made or not.

From the perusal of the record, I find that the order dated 25.05.2017 passed by learned Addl. Sessions Judge, Fatehabad holding that prima facie case under Sections 420, 506 and 120-B is made out, is as per law and no illegality has been committed while partly accepting the revision petition. The order dated 14.11.2014 passed by learned SDJM, Tohana, is not as per law. At the time of framing the charge, the Court is not to weigh the evidence for the purpose of conviction. The Court is only to see whether it is case of some evidence or no evidence. In no way, the present case can be held as case of no evidence.

Therefore, finding no merit in the present petition, the same is dismissed.

July 19, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**