

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

CRR-3263-2012

Date of decision:-19.12.2017

Paramjit Singh Dhaliwal and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Toor, Advocate
for the petitioners.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Petitioners – Paramjit Singh Dhaliwal, Baby, Balwant Singh @ Bant, Gurpreet Singh and Kuldeep Kaur @ Preeto, accused in FIR No.62 of 23.2.2006, under Sections 420/120-B IPC, registered with Police Station Rania have preferred the present revision against the judgment dated 31.8.2012 passed by learned Additional Sessions Judge, Sirsa vide which he had accepted the appeal filed by the complainant and vide order dated 17.9.2012 sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.50,000/- each and in default

thereof, to further undergo simple imprisonment for a period of six months under Section 420 read with Section 120-B of the Indian Penal Code.

Briefly stated, facts of the case as per prosecution version are that FIR in this case was registered on the basis of written complaint submitted by complainant Balbir Singh to the police wherein he contended that his son Atma Singh, a matriculate has been a Bhangra dancer, who had participated in various events; that Narayan Singh Bajwa had observed his performance and had a talk with the complainant offering to send Atma Singh to Canada representing that Paramjit Singh, Promoter was known to him, who had sent many children with artists for performing in such shows in Canada and other countries and who had ultimately settled them in those foreign countries; the complainant fell in the trap and after 3-4 days went to Bhatinda where Narayan Singh accompanied by complainant met Bhagwant Singh who was working as Secretary with Paramjit Singh Dhaliwal, Promoter; that Bhagwant Singh represented to them that a singer group comprising Sukhpal Singh Pali, Sandeep Singh, Gurwinder Sidhu, Baljeet Singh etc. would be going to Canada on the occasion of Baisakhi and a troop of eight Bhangra dancers would go with them; that it is further contended that after 10-12 days, the complainant had a telephonic conversation with Paramjit Singh Dhaliwal and as per appointment fixed on 13.2.2004 the complainant along with his son Atma Singh and accused Narayan Singh reached Bhatinda where they found that Gurtej Singh and his brother Hardev Singh belonging to village Haripura to be already reached there; that as a matter of fact Paramjit

Singh Dhaliwal had invited many young boys and on that day conducted their screen test stating that he would inform them regarding the result later on telephonically; that after 10-11 days, Bhagwant Singh informed them that Atma Singh had been selected in the screen test and asked them to reach Bhatinda office, that accordingly complainant, his son Atma Singh along with Narayan Singh reached there and they found that Gurtej and Hardev of village Haripura were also present there; that after a while Paramjit Singh Dhaliwal called them inside his office stating that they would be giving 15 days training to Atma Singh since the eight members of their Bhangra group were to be selected; that he asked the complainant to deposit a sum of Rs.20,000/- as training fee, dress fee etc.; that Atma Singh along with other boys got training of 15 days at Bhatinda office of Paramjit Singh Dhaliwal; that in the last week of March, a photo session was conducted, thereafter, Paramjit Singh Dhaliwal, his wife Baby Dhaliwal, brother-in-law Gurpreet Singh, his wife Preeto @ Kuldeep Kaur and Balwant Singh, father of Paramjit Singh Dhaliwal were present at the photo session; that thereafter Baby informed the complainant as well as Narayan Singh that Atma Singh and Gurtej Singh, Haripura Wala had been selected , whereas Paramjit Singh Dhaliwal told that a current rate for sending a person to Canada was Rs.17 lakhs, which had been increased due to Daler Mehandi episode and the complainant would have to deposit Rs.5 lakhs within three days, Rs.7 lakhs till 10th April and Rs.4 lakhs on 12th April for the purpose of purchase of ticket since stage shows in Canada were to be held on 17th , 21st and 29th April; that it was stated that after the stage shows, the two boys would stay back with the relatives

of Paramjit Singh Dhaliwal, already settled down there; that Paramjit Singh Dhaliwal had told the complainant that in case he did not give response till 12:00 noon, then he (Paramjit Singh Dhaliwal) would send some other boys; that Narayan Singh furnished guarantee regarding the safety of money and Kulwant Kaur wife of Narayan Singh gave an assurance regarding credibility of the Dhaliwal family, as such complainant agreed to the offer; that on 5.4.2004 Smt.Baby wife of Paramjit Singh Dhaliwal, Bhagwant Singh, Gurpreet Singh and Balwant Singh came to the house of Narayan Singh in two Indica cars, who had informed the complainant telephonically asking him to arrange the money; that then they reached Rania at the shop of M/s Khinda Property Dealer, where the complainant and Hardev Singh handed over Rs.5 lakhs each in cash in presence of Gurnam Singh son of Amar Singh and Savinder Singh son of Gurbachan Singh besides passport of Atma Singh to accused Gurpreet Singh; that Hardev Singh had also handed over the passport of his brother Gurtej Singh to accused Gurpreet Singh; that regarding the remaining payment of Rs.7 lakhs each, the accused Balwant Singh and Gurpreet Singh stated that the same must be paid before 8.4.2004 at every cost because documents were to be prepared after which Rs.4 lakhs each would have to be deposited after the tickets are shown to them; that on 8.4.2004 at about 8:00 a.m. in the morning complainant had a telephonic talk with Paramjit Singh Dhaliwal, who told him that he was at Delhi in connection with the completion of documents and asked the complainant to visit his house at Abuwal making the remaining payment to his wife Baby; that accordingly the complainants went there and found

Balwant Singh, father of Paramjit Singh Dhaliwal, Gurpreet Singh and his wife Preeto and Smt.Baby to be present there and after having lunch with them the complainant handed over Rs.5 lakhs, whereas Hardev Singh handed over Rs.7 lakhs; that accused Baby and Preeto asked the complainant to give Rs.2 lakhs more but the complainant expressed his inability stating that he would give Rs.6 lakhs, when the ticket was shown to him. It is further alleged that accused Baby Dhaliwal told them to visit room No.9 in the Hotel Chanchal situated in Paharganj, Delhi; that after arranging the remaining payment, the complainant and Hardev Singh went to Delhi on 10.4.2004, where one room was booked in that hotel in the name of accused Bhagwant Singh and Gurlal; that the complainant and Hardev Singh met Paramjit Singh Dhaliwal, who on 11.4.2004 showed them 8 tickets dated 14.4.2004; that when the boys were not sent, they inquired from Paramjit Singh Dhaliwal, who stated that due to non-payment by two members of the eight members, he had not sent Bhangra group but the ticket would be renewed; that Paramjit Singh Dhaliwal asked them to return home and left two boys behind, who would be sent by flight on 21.4.2004, however, it did not happen; that the complainant and his companion asked the accused Paramjit Singh Dhaliwal telephonically, who stated that there were rush in the flights since examinations of students had just got over and stage shows had been delayed and the tickets were booked for 29.4.2004, however, on 29.4.2004 the two boys did not fly and in the evening they were informed that Paramjit Singh Dhaliwal had switched off his mobile phone and was not in their contact; that the accused persons were not found anywhere at

Ludhiana and Bhatinda and their mobile phones were also found to be switched off; that then the complainants went to Delhi and paid the hotel bill of Rs.24,000/- and then brought the boys back; that the Bhatinda office of the accused was found to be closed; that further complainant convened a Panchayat of respectables where Paramjit Singh Dhaliwal and his family members confessed their guilt, however, they neither returned the money nor the passport of Atma Singh; that Smt.Baby wife of Paramjit Singh Dhaliwal and her brother Gurpreet Singh had made false visa and air tickets after scanning them, in that way committing a fraud. The complainant sought taking of action against such wrongdoers. After registration of the formal FIR, the case was investigated. Paramjit Singh Dhaliwal accused was arrested in this case and he during the course of interrogation suffered a disclosure statement and got recovered a sum of Rs.25,000/-. The remaining accused were also apprehended. Supplementary challan against accused Paramjit was presented on 4.1.2008 on which date accused Bhagwant Singh had confessed his guilt and vide judgment of that date, he was held guilty, convicted and sentenced by the trial Court.

On presentation of challan and supplementary challans in the Court, copies of documents relied upon in the same were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Formal charge for the offences under Section 420 read with Section 120-B IPC was framed against accused Balwant and Bhagwan Singh on 3.1.2007, against accused Paramjit Singh Dhaliwal on 4.1.2008, against Baby @ Rashwinder Kaur and Kuldeep Kaur @ Preeto on

1.2.2008. Accused Balwant Singh was declared a proclaimed offender vide order dated 27.9.2007. He was re-arrested on 25.9.2009. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution examined as many as nineteen witnesses, namely, Sukhdev Singh as PW1, Rattan Singh as PW2, Richhpal Singh as PW3, Hardev Singh as PW4, Gurcharan Singh SI as PW5, Constable Madan Lal as PW6, ASI Ran Singh as PW7, Gurtej Singh as PW8, Atma Singh as PW9, Pritam Kumar ASI as PW10, SI Krishan Lal as PW11, ASI Attar Singh as PW12, SI Krishan Kumar as PW13, Gurnam Singh as PW14, SI/SHO Sohan Lal as PW15, Avinder Pal as PW16, Sudarshan Batra, Manager Hotel Chanchal Continental, Paharganj, Delhi as PW17, Anil Kumar, Manager Raj Relex Hotel, Paharganj, New Delhi as PW18 and Savinder Singh as PW19.

With that the prosecution evidence stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Accused did not lead any evidence in defence.

After hearing arguments, learned trial Court acquitted the accused of the charge framed against them as detailed above.

Feeling aggrieved, the complainant filed an appeal in the Court of Sessions, which was accepted vide order dated 31.8.2012 and the accused were convicted and sentenced as mentioned supra.

Feeling dissatisfied with the said judgment in appeal, the accused have approached this Court by way of filing the present revision petition, notice of which was issued to the State, which put in appearance through counsel.

I have heard learned counsel for the petitioners-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record.

The reasoning given by the First Appellate Court are as under:

Now, in this case what is material is that all the incriminating evidence was put to the accused when their statements u/s 313 Cr.P.C. were recorded and they have simply denied all the circumstances and did not furnish any explanation regarding their involvement in this case especially when they are residents of distant place and complainant party are residents of District Sirsa. They also failed to explain as to what kind of ill will or malice on the basis of which they have been implicated in this case.

In criminal case the prosecution has to prove its case beyond reasonable doubt and in civil cases the cases are decided on preponderance of probabilities. The prosecution has to prove its case beyond reasonable doubt means that there should not be any such dent in the prosecution evidence on the basis of which case of the prosecution becomes doubtful. Dent should be reasonable.

Each and every dent cannot be said to be reasonable. Reasonable means it appeals to the human conscience and which appears as probable.

In civil cases there are two parties, one files a plaint and the opposite party files a written statement. In criminal cases there is either State or a private complainant. The evidence is got recorded by the complainant in the presence of the accused and the accused is given an opportunity to explain the evidence appearing against him then he may take up his defence in statement u/s 313 Cr.P.C. when his statement is recorded. Thus, the procedure in both the civil and criminal cases is almost the same except a few variations. Order 8 Rule 3 CPC provides that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Rule 4 provides that where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else

set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Rule 5 provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability: Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Sub Rule (2) provides that where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment Is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

Meaning thereby whenever statement of the accused u/s 313 Cr.P.C. is recorded he is given an opportunity to controvert the evidence appearing against him and he is at liberty to show that he denies all the circumstances appearing against him and he would lead evidence in defence. When he denies the circumstances but does not lead any evidence in defence then the evidence led by the prosecution has to be taken into consideration.

The Courts have to see that there should be principle of equity and justice and the Courts do not become an instrument for unjust enrichment of a person.

Further, this Court has full power to review, re-appreciate and reconsider evidence upon which order of acquittal was passed by learned lower Court. This view of this Court finds support from citation Ram Singh alias Chhaju Vs. State of Himachal Pradesh – 2010(2) Supreme Court Cases 445. In the aforesaid cited case, accused – appellant was acquitted by learned Sessions Judge. The State of Himachal Pardesh had carried the matter by filing Criminal Appeal before Hon'ble HighCourt and Hon'ble

High Court allowed the appeal and convicted the accused. Aggrieved by that order appellant Ram Singh approached Hon'ble Supreme Court and Hon'ble Supreme Court dismissed the appeal of the appellant Ram Singh and has clearly held that "Appellate Court has full power to review, re-appreciate and reconsider evidence upon which order of acquittal is founded. The conviction of appellant by Hon'ble High Court was justified.

Learned counsel for the petitioners has argued that the view taken by the trial Court resulting in acquittal of the accused was absolutely correct and learned Additional Sessions Judge, Sirsa had wrongly upset the said judgment and ordered conviction of the accused.

Whereas learned State counsel has contested this contention contending that learned First Appellate Court has dealt with all the aspects in detail. The trial Court had wrongly ignored the positive evidence adduced by the prosecution against the accused, which was incriminating qua them and accused could be convicted on the sole testimony of a witness, which inspires confidence in terms of Section 134 of the Indian Evidence Act, therefore First Appellate Court was justified in passing the impugned judgment.

The second contention of learned counsel for the petitioners was that no document has been attached with regard to payment of money, therefore, the case of the prosecution remains unproved. Learned State counsel rendered explanation stating that in such type of cases

documentary evidence is hardly there and money change the hands on the basis of trust. I find the explanation rendered by learned State counsel to be plausible and satisfactory. Keeping in view the nature of transaction, there is no unusual in the money changing hands in the form of cash and not through any cheque, draft, etc. thereby creating any document regarding payment of the money.

One more argument advanced by learned counsel for the petitioners was as regards the delay in lodging of FIR. True some delay is there but the same is not fatal to the present case. Neither it is alleged nor proved that there had been any previous enmity between the accused and complainant prompted by which they might have involved the accused in this case wrongly and deposed against them to secure their conviction. The explanation put forward for the delay is that efforts for amicable settlement were being made and when those did not mature, then a report was lodged with the police.

After hearing the rival contentions of the parties, I find that the First Appellate Court by proper appraisal of evidence and correct interpretation of law correctly returned a finding that charge against accused stood proved and thereafter sentenced the accused- convicts. There is no illegality or infirmity committed by learned Additional Sessions Judge, Sirsa.

Therefore, the First Appellate Court was justified in convicting the petitioners/accused keeping in view the seriousness of offences committed by them. The sentence awarded cannot be said to be excessive and no interference is called for in the impugned judgment

either as regards the conviction or sentence part. The revision petition is found to be without any merit and is dismissed accordingly.

The petitioners are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Sirsa is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

19.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No