

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

CRR No.4061 of 2016(O&M)
Date of Decision-16.05.2017

Lakhvir Singh @ Kala and another ... Petitioners

Versus

State of Punjab ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vivek Goel, Advocate
for the petitioners.

Mr. P.S. Ghuman, Additional AG, Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioners Lakhvir Singh @ Kala and Sukhmander Singh @ Neelu have preferred this criminal revision against the judgment dated 05.10.2016 passed by the Additional Sessions Judge, Moga, whereby judgment of conviction and order of sentence dated 13.11.2013 passed by the Judicial Magistrate First Class, Moga was upheld.

[2]. Both the petitioners along with Major Singh were tried in FIR No.236 dated 30.09.2005 registered under Section 420 IPC at Police Station Baghapurana. Complainant-Lakhwinder Singh lodged the FIR with the allegations that he was running a flour mill and he started some construction near his flour mill on 29.09.2005. At about 4 PM, complainant and his friend Gurmail Singh were present near the construction, then four persons came there. One of them was Lakhvir Singh @ Kala, second

person was Sukhmander Singh and third person was Major Singh. Fourth person was named to be Kirpal Singh (J.E). The aforesaid persons claimed themselves to be employees of Water Works Department in Moga. They offered the complainant cement and saria on lesser price than the market rate. The matter was settled for 100 bags of cement and 10 qts. of saria. Complainant paid an amount of Rs.5000/- to them as advance. The balance was to be paid on delivery of the articles. Later on, after half an hour, all of them again came to the spot and demanded the balance amount. Complainant became suspicious and he called his relative Karam Singh who was also cheated by some persons in the sum of Rs.31,000/- in the same manner. Complainant asked the accused persons to come back after one hour and in the meanwhile, he informed his relative on telephone. The relative Karam Singh also came at Baghapurana. The accused again came back after one hour. The relative of the complainant namely Karam Singh also reached there. On seeing the persons, Karam Singh told the complainant that they were the same persons who had also cheated him. On this, accused ran away from the spot. With these allegations, FIR came to be registered.

[3]. After filing the challan, charges were framed under Sections 420/34 IPC to which accused pleaded not guilty and claimed trial. Accused Kirpal Singh was declared as proclaimed offender on 12.09.2009. Proceedings qua Major Singh were

abated on his death vide order dated 06.08.2012. Thereafter, prosecution led evidence and examined complainant as PW 1, Jagdish Lal as PW 2 and Gurmail Singh as PW 3.

[4]. Statements of the accused/petitioners were recorded under Section 313 Cr.P.C and all the incriminating material was put to them in their statements to which the accused/petitioners denied and claimed innocence.

[5]. Trial Court took cognizance over the issue i.e.

“Whether all the accused acted in furtherance of common intention of each other cheated the complainant Lakhwinder Singh by dishonestly inducing him to deliver Rs.5000/- on the pretext of providing him cement and saria on cheaper rate?” If so its effects.

[6]. After due consideration of the evidence on record, trial Court ultimately convicted the petitioners for the offence under Section 420 IPC and sentenced them to undergo rigorous imprisonment for 1 year and to pay fine of Rs.1000/- along with default mechanism.

[7]. Feeling aggrieved against the aforesaid judgment of conviction and order of sentence dated 13.11.2013 passed by the Judicial Magistrate First Class, Moga, petitioners filed appeal before the Additional Sessions Judge, Moga, which was dismissed vide order dated 05.10.2016. That is how, the present criminal revision came to be filed in this Court.

[8]. During course of arguments, learned counsel for the petitioners submitted that criminal revision qua petitioner No.1 Lakhvir Singh has become infructuous as he has completed the sentence. Learned counsel has pressed the criminal revision on behalf of petitioner No.2 on quantum by submitting that petitioner No.2 has already undergone about 8 months of actual sentence as on date out of total sentence of 1 year.

[9]. Vide order dated 07.11.2016, statement of learned counsel for the petitioners was recorded to the effect that the learned counsel did not press this criminal revision on merits, rather confined his arguments only qua quantum of sentence. Notice of motion was issued on the said premise.

[10]. As per custody certificate of petitioner No.2, the aforesaid period of incarceration has come to fore. Learned counsel for petitioner No.2 submitted that the amount of fine has been paid and petitioner No.2 is not involved in any other case. Petitioner No.2 has a big family to maintain and ultimately prayed reduction in sentence for the period already undergone by petitioner No.2.

[11]. Having considered the submissions made at the bar, I am of the view that out of total sentence of 1 year, petitioner No.2 has already undergone about 8 months of actual sentence. The amount involved is only to the tune of Rs.5000/- as the deal could not be completed on account of timely intervention of

Karam Singh relative of the complainant. The factum of Kirpal Singh (J.E) being proclaimed offender though noticed by the trial Court, but subsequent course of action has not come forth on record, even otherwise co-accused would face lawful proceedings in the event of his arrest or his surrender. In the present criminal revision, out of two petitioners, one has already completed the sentence. Petitioner No.2 is also at the verge of completing the same.

[12]. Taking into consideration the facts and attending circumstances of the case, I am of the view that the case of petitioner No.2 can be considered for reduction in sentence. Consequently, remaining sentence of petitioner No.2 is reduced to the period already undergone by him. If the amount of fine has not been paid, the same be paid before release of petitioner No.2 from the custody.

[13]. Criminal revision stands disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

16.05.2017

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No