

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

**CRR No.675 of 2016 (O&M)
Date of Decision: August 29, 2017**

Gian Dass

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarbjit Singh Hira, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

Mr.R.S.Bajaj, Advocate
for respondents No.2 to 4.

INDERJIT SINGH, J.

CRM No.25988 of 2017

This application has been filed under Section 391 Cr.P.C. read with Section 401 Cr.P.C. for placing on record additional evidence i.e. copy of judgment and decree dated 30.07.2014 passed by learned Civil Judge (Jr. Division), Hoshiarpur and judgment and decree dated 29.09.2015 passed by learned District Judge, Hoshiarpur as Annexures P1 and P-2.

Heard.

As the judgment passed by learned Civil Court is not binding upon the criminal court and vice versa, therefore, the above-said judgments

and decrees are not relevant in the present case.

Therefore, the present application stands dismissed.

CRR No.675 of 2016

The present revision has been filed by the petitioner Gian Dass against State of Punjab and other respondents, challenging the impugned judgment dated 08.10.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, vide which the appeal filed by the accused-respondents against the judgment of conviction and order of sentence dated 15.01.2014 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, was allowed and they were acquitted of the charges framed against them.

Notice motion was issued. Learned State counsel as well as learned counsel for respondents No.2 to 4 appeared and contested the petition.

Lower Court record was requisitioned.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that challan was presented against accused Manohar Singh, Baljit Kaur, Kamajit Singh (Proclaimed Offender) and Harnaj Kaur @ Beeba in case FIR No.188 dated 30.11.2006 under Section 420 IPC. The brief facts of the case as noted down in the judgment passed by learned JMJC, Hoshiarpur, are as under:-

“2. This case was registered on the basis of the application written by Gian Das, son of Moti Ram, addressed to SSP, Hoshiarpur, whereby it has been stated that he was resident of village Marula, Tehsil and District, Garhshankar, district Hoshiarpur. He further stated out of above said accused, Baljit Kaur and her husband Manohar Singh known to his relative Paramjit Singh, and the above said accused meet the complainant at the house of Paramjit Singh at village Thakarwal and they told the complainant that they are sending persons to Spain and if you want to send your son abroad, then they can sent him abroad. The complainant further stated that

he agreed to send his son Gurmit Chand and the deal was settled for ₹4,00,000/-, out of which ₹2,00,000/- was to be paid in advance and remaining amount of ₹2,00,000/- was to be paid after reaching the son of complainant at Spain. The accused persons assured the complainant that they will send his son abroad within three months. It was further stated that on 1.6.2006, he handed over ₹20,000/- alongwith passport of his son of Harnaj Kaur @ Biba and Kamaljit Singh @ Kala in the presence of Harbhajan Lal, Tarsem Lal and Paramjit Singh. The complainant further stated that he borrowed the money from his brother Tarsem Lal. Thereafter, on 7.9.2003, he handed over ₹40,000/- to Harnaj Kaur and Kamaljit Singh. After getting the above said amount the accused persons arranged Visa for Tanzania. Then, the complainant asked the accused persons that their deal was struck to send his son to Spain and not to Tanzania. On this pretext accused persons demanded ₹1,00,000/- more from the complainant and he handed over ₹1,00,000/- to Baljit Kaur and Kamaljit Singh at village Thakarwal on dated 07.10.2003 in presence of Paramjit Singh, Tarsem Lal and Harbhajan sons of Moti Ram. Then, accused persons told the complainant to arrange remaining money as soon as possible and they will get the Visa. The complainant further stated that, he handed over ₹40,000/- to Baljit Kaur and Manohar Singh at the house of Baljit Kaur in presence of Paramjit Singh and Harbhajan Lal. After receiving the above said money the accused persons neither sent his son abroad nor they returned their money. It was further stated that the complainant approached the accused persons and requested to return his money, but all in vain. The complainant further stated that out of the accused persons accused Baljit Kaur entered into agreement dated 17.4.2004, vide which she agreed to return the money. However, the accused persons did not return his money. The complainant further stated that after their best efforts the accused persons returned the passport only. In the end prayer for taking legal action against the above said accused was made.”

On presentation of challan against the accused, copies of challan and other documents were supplied to them under Section 207 Cr.P.C. Finding prima facie case, the accused were charge-sheeted under Section 420 read with Section 34 IPC, to which they pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Tarsem Lal,

PW-2 Gian Dass, complainant, PW-3 Devinder Kaur, PW-4 Inspector Nirotam Kumar, Investigating Officer, PW-5 Paramjit Singh, PW-6 Harbhajan Lal, PW-7 Bakshish Singh and PW-8 Deshraj.

At the close of prosecution evidence, the accused were examined under Section 313 Cr.P.C. They were confronted with the evidence of the prosecution and they denied the correctness of the evidence and pleaded themselves as innocent. In defence, accused examined DW-1 Kuldeep Singh.

Learned JMIC, Hoshiarpur, on the basis of the evidence, convicted the accused-respondents Manohar Singh, Baljit Kaur and Harnaj Kaur under Section 420 IPC and sentenced them to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1500/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month under Section 420 IPC. An appeal was filed by the accused-respondents before Court of Session and learned Addl. Sessions Judge, Hoshiarpur, vide impugned judgment dated 08.10.2014, accepted the appeal and acquitted the accused-respondents of the charges framed against them.

Aggrieved from the above-said judgment dated 08.10.2014, present revision has been filed by the petitioner-complainant.

From the record, especially the judgment dated 08.10.2014, I find that the findings given by learned Addl. Sessions Judge, Hoshiarpur, are correct, as per evidence and law. In no way, the findings can be held as perverse or against the evidence or law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has

been pointed out as to how the findings are illegal.

First, there is no written document to show payment of money i.e. on which date, in which month and to whom. Secondly, I find that money, as per the complainant, is stated to have been paid in the year 2002-03 and the FIR was got registered in 2006. Learned Addl. Sessions Judge, Hoshiarpur, after appreciating the evidence in minute detail, held that there is nothing on the record to show that intention of the accused were to cheat the complainant from the very beginning. Rather, document relied upon by the prosecution itself shows that due to certain reasons, Gurmit Chand could not be sent to Spain. Ex.PA is the agreement relied upon by the prosecution. This agreement is dated 17.04.2004 and as per this agreement, it is stated that ₹2 lakhs was given to Baljit Kaur. This agreement nowhere shows that money was paid to Harnaj Kaur alias Beeba, Kamaljit Singh or Manohar Singh. Therefore, the version given in the FIR is not in consonance with this agreement Ex.PA, which is dated 17.04.2004. The perusal of this agreement further shows that only Baljit Kaur agreed to return the money. Another document Ex.PW1/A also relied upon by the prosecution shows that ₹2 lakhs was taken by Baljit Kaur and Manohar Singh from the complainant. This fact further creates doubt in the prosecution version.

Furthermore, in this agreement Ex.PA, it is written that due to certain reasons, Gurmit Chand cannot be sent to Spain and this document is written on behalf of complainant Gian Dass, which means that the complainant himself admitted that there was no intention to cheat him as his son could not be sent to Spain due to certain reasons. Therefore, from this document, it is clear that there was no intention of the accused to cheat the

From the record, I find that learned Addl. Sessions Judge, Hoshiarpur, has rightly acquitted the accused-respondents. The impugned judgment dated 08.10.2014 passed by learned Addl. Sessions Judge, Hoshiarpur, is correct, as per law and evidence and does not require any interference from this Court.

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

August 29, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No