

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-132 of 2017 (O&M)
Date of decision : 18.7.2017

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Rajinder Singh
.....Petitioner

vs.

Union Territory, Chandigarh
.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Malkeet Singh, Advocate for the petitioner

Mr. A.S. Virk, APP for U.T. Chandigarh.

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H. S. Madaan, J.

This revision petition has been filed against judgment dated 22.11.2016 passed by Additional Sessions Judge, Chandigarh vide which the said Court had dismissed the appeal filed against judgment of conviction and order of sentence dated 11.3.2014, passed by the Court of Judicial Magistrate Ist Class, Chandigarh, vide which the petitioner was convicted and sentenced as under:-

<i>Name of convict</i>	<i>U/s</i>	<i>Rigorous imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine, imprisonment for</i>
Rajinder Singh	420 IPC	2 years	Rs.1,000/-	One month
	467 IPC	2 years	Rs.1,000/-	One month
	468 IPC	2 years	Rs.1,000/-	One month
	471 IPC	2 years	Rs.1,000/-	One month

All substantive sentences were ordered to run concurrently.

Briefly stated, the prosecution story is that on 12.11.2011, a police party from Police Station, Sector 39, Chandigarh, headed by SI Balwan Singh was present near Mohali Barrier, Village Palsora, in connection with patrolling and crime detection, when at about 7.30 P.M. it came across Ramesh Kumar. Then a secret information was received by SI Balwan Singh that accused, namely, Rajinder Singh, residing on rent at Village Palsora, was engaged in work of preparing fake Matriculation certificates and those of 10+2 of Punjab School Education Board, Mohali. He used to sell those certificates at price of Rs.10,000/- each. He also used to take particulars from persons and get the certificates prepared of Punjab School Education Board, Mohali. Information was received that Rajinder Singh was in his room and if a raid was conducted he could be apprehended.

Accordingly, a raiding party was constituted. Ramesh Kumar was appointed as decoy and a Rs.500/- currency note was handed over to him, which was dully initialed by SI Balwan Singh. Ramesh Kumar went to Rajinder Singh and gave him advance money which included Rs. 500/- currency note having initials of Investigating Officer, asking Rajinder Singh to prepare the certificates and DMC of 10th and 12th class. HC Vidya Nand, who was in plain clothes, was deputed to act as a shadow witness, to remain near Ramesh Kumar and overhear to the conversation. At about 9.00 P.M. Rakesh Kumar and shadow witness told SI Balwan Singh that deal was finalized for Rs.20,000/-. The time for making remaining payment and collecting certificates was fixed as 9.30 P.M.

At about 9.30 P.M. such persons went to the room of Rajinder Singh. SI Balwan Singh, stood near the room of Rajinder Singh, from where he could see the shadow witness. After about 20 minutes, shadow witness gave a signal. Then SI Balwan Singh entered the room of Rajinder Singh. On checking of envelope two DMCs of Punjab School Education Board, Mohali, one matriculation certificate of roll No. 451623, having stamp of Jagjit Singh Sidhu Secretary and another DMC of 12th class of roll No. 14119881, bearing stamp of Jagjit Singh Sidhu Secretary, were recovered. The note of Rs.500/- denomination bearing initials of SI Balwan Singh was also recovered from possession of accused. Investigating Officer sent *ruqa* to the Police Station, on the basis of which formal FIR was registered. Accused was arrested in this case.

After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Magistrate.

When the challan was filed against the accused in the Court of Illaqa Magistrate, he supplied copies of documents relied upon therein to the accused free of cost, as provided under Section 207 Cr.P.C. and then finding a prima facie case, charge for offence under Sections 420, 467, 468, 471 IPC, was framed against the accused, to which he pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined in as much as 8 PWs i.e. PW-1 Inspector Har Sahai Sharma, PW-2 SI Balwan Singh, PW-3 HC Vidya Nand, PW-4 HC Harbans Singh, PW-5 SI Harinder Sekhon, PW-6 HC Gurdas Singh, PW-7 Jimmy Garg

and PW-8 Kewal Singh.

When the prosecution evidence got concluded, statement of accused was recorded under Section 313 Cr.P.C. in which all the incriminating evidence appearing against accused was put to him, but he denied the allegations, stating that he is innocent and has not committed any offence. The accused further stated that he has been falsely implicated in this case; that he had passed only primary class and is not much educated; that he is doing the work of mason for the last 30 years; that for the last eight years he has been suffering from partial paralysis of his leg; that on 12.11.2002, he was arrested by the police at Mohali Barrier under the influence of liquor and was falsely implicated in the present case.

After hearing arguments, the trial Magistrate has convicted and sentenced the accused as detailed above. The accused-petitioner preferred an appeal against his judgment of conviction and sentence, which was also dismissed, as such he has knocked at the door of this Court.

Notice of the revision petition was given to the State, which has put in appearance through State counsel.

I have heard learned counsel for the parties, besides going through the record and I find that there is no merit in the revision petition.

Section 401 Cr.P.C. deals with High Court's power of revision. After going through the record I find that the instant case does not fall within four corners of this provision. Revisional jurisdiction is somewhat limited in nature and while exercising the

same it is to be seen whether the order passed is manifestly illegal or would result in gross miscarriage of justice. Such type of power is to be exercised very selectively and not in routine. The Court is certainly not to re-analyse the evidence, in the process reaching some separate conclusion. The counsel for revision petitioner laid much stress on the point that Ramesh Kumar, the alleged decoy sent to the accused has not been examined in this case. But then the Courts below by giving proper reasoning, have arrived at the conclusion that his non-examination does not make much difference, when the case is otherwise established on the file.

However, this fact was convincingly noted by the trial Court and Ist Appellate Court, while convicting the accused.

Learned counsel for the revisionist-petitioner has raised various other arguments like material discrepancies in the statements of PWs, non-joining of independent witnesses etc. However, I find that such type of contentions do not cut much ice. It is for the prosecution to see as to which witness is to be examined and which not.

As regards second contention of learned counsel for the revision-petitioner that there are several material contradictions and variations between the PWs, that is not of much concern. Forgetfulness is one of the basic human traits. One does forget about what he had spoken or done a little time earlier. Further more two persons watching the same event will not give identical version of the same, rather some variation would be there. Such variation is natural and probable and it is bound to occur due to lapse of memory as a

result of passage of time. Therefore, those discrepancies, variations etc., which certainly do not go to the root of the matter, do not cut much ice.

As regards, non-joining of independent witnesses, at the time of apprehending the accused and effecting recovery from him, the fact remains that nowadays the people try to keep away from police cases, thinking that they have to compromise with their comfort and convenience, if they join the investigation of some criminal case and would have to go to police station and courts time and again, suffering the pain and humiliation in the process. Therefore, non-joining of independent witness is not such a reason for which the prosecution version should be disbelieved.

The charge against the accused stood proved from the overwhelming evidence brought on file by the prosecution. PW-1 Har Sahai Sharma, had deposed that on 20.7.2003, while he was incharge of Police Post Palsora, he had gone to Punjab School Education Board, Mohali, in connection with investigation of the case and had collected the verification report in respect of 15 certificates/DMCs, which being Exhibits P-1 to P-15 and verification report as Exhibit P-16. He further stated that he had also collected the necessary verification report in respect of certificate and DMC of Ramesh Kumar, Exhibits P-17 to P-20 and verification report Exhibit P-21.

SI Balwan Singh had submitted an application to Punjab School Education Board for verification and had collected the certificates Exhibits P-1 to P-15 and Exhibits P-17 to P-20, and when he received the verification report, he recorded the statement of

Superintendent Karnail Singh in that regard, in support of certificates and DMC, not of Punjab School Education Board, Mohali.

PW-2 SI Balwan Singh, Investigating Officer, deposed regarding his part with regard to the present incident. He testified regarding two mark sheets from the hand of Rajinder Singh having been recovered i.e. Exhibits P 3/3 and P 3/4 and currency note of Rs.500/-, which was numbered were recovered from the pocket of shirt of Rajinder Singh. Those articles have been taken into possession vide seizure memo Exhibit PW 5/1.

The prosecution has successfully proved its charge and that accused had dishonestly induced Rakesh Kumar decoy to part with money for selling him forged certificates, in the process cheating him and he had also used forged certificates/documents as original. The accused was rightly convicted and sentenced for offence under Sections 420, 467, 471 IPC. He has been sentenced to undergo rigorous imprisonment for 2 years for substantive offences. It is stated that he had already undergone total sentence of 8 months and 13 days, which includes earned remissions from 1.1.2017 to 30.4.2017. The accused is stated to be an old man of 65 years, who is behind the bars for about 8 months. As such he be dealt with leniently.

Keeping in view old age of the revision-petitioner and the fact that no previous conviction has arisen against him, I am of the considered view that ends of justice would be adequately met if the substantive sentence awarded to the revision petitioner is reduced from 2 years to 1 ½ years. Accordingly, it is so ordered and period of sentence for each conviction would be as under:-

<i>Name of convict</i>	<i>U/s</i>	<i>Rigorous imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine, imprisonment for</i>
Rajinder Singh	420 IPC	1 ½ years	Rs.1,000/-	One month
	467 IPC	1 ½ years	Rs.1,000/-	One month
	468 IPC	1 ½ years	Rs.1,000/-	One month
	471 IPC	1 ½ years	Rs.1,000/-	One month

All the substantive sentences are ordered to run concurrently.

The period spent by him in jail would be set off as regards the substantive sentence awarded to him.

With such modification, the revision petition is allowed partly.

(**H.S. Madaan**)
Judge

18.7.2017
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Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No