

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

**CRR No.710 of 2016 (O&M)
Date of Decision: August 30, 2017**

Rajwinder Kaur @ Rajinder Kaur @ Lalli

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Amaninder Preet, Advocate
for the petitioner.

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

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Rajwinder Kaur @ Rajinder Kaur @ Lalli against respondent State of Punjab, challenging the impugned judgment of conviction and order of sentence dated 01.12.2014 passed by learned Addl. Chief Judicial Magistrate, Moga, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹1000/- and in default of payment of fine, to undergo imprisonment for a period of two months under Section 420 IPC and further to undergo rigorous imprisonment for a period of six years under Section 506 IPC and also challenging the judgment dated 21.01.2016 passed by learned Addl. Sessions Judge, Moga, vide which appeal filed by petitioner was dismissed.

Both the sentences were ordered to run concurrently. However, co-accused Jasvir Singh was acquitted of the charges framed against him.

From the record, I find that challan was presented against petitioner and co-accused Jasvir Singh in case FIR No.117 dated 05.09.2009 under Sections 420, 406 and 506 IPC. The brief facts of the case as noted down in the judgment passed by learned ACJM, Moga, are as under:-

“2. Prosecution story in brief is that one application moved by complainant Surinder Singh to the Senior Superintendent of Police, Moga for initiating action against Rajwinder Kaur and Jasvir Singh was received. The allegations made in the complaint were that on 5.04.2007, marriage of daughter of complainant was solemnised with Janothan Balwinder Dass son of Janothan Major, resident of Canada and Rajwinder Kaur was mediator, She had raised a demand of Rs.27,00,000/- for sending his daughter to Canada. On 5.04.2007, when marriage was solemnized, they had given Rs.13,50,000/- to Rajwinder Kaur @ Lalli and the remaining sum was to be paid when she reached Canada but his daughter has not gone to Canada so far. Rajwinder Kaur had misappropriated the sum and thus cheated them. They had been demanding money from Rajwinder Kaur but she had been threatening. So, he prayed for action. 3. This complaint of complainant was got inquired from ASI Jarnail Singh and it was found that on 16.03.2007, Surinder Singh and Iqbal Singh as well as Balbir Singh had gone to the house of Jasvir Singh where Jasvir Singh and Rajwinder Kaur were present and in the presence of Iqbal Singh and Balbir Singh, there took place a discussion with regard to marriage of daughter of complainant and a telephonic conversation was held with Jonathan Balwinder Dass and the marriage was settled for a sum of Rs.27,00,000/- out of which, half the amount was to be given before the marriage and remaining when girl reached Canada. On 24.03.2007 in the presence of Iqbal Singh and Chamkaur Singh, sum of Rs.13,50,000/- was given to Rajwinder Kaur and Jasvir Singh by complainant who asked them to make arrangement for the marriage. On 26.03.2007 marriage of daughter of complainant was solemnised at Basant Palace, Jagraon and Anand Karaj ceremony was performed at Gurdwara Bagichi Sahib, Chuhar Chak. On 5.04.2007, marriage between the couple was registered but after the marriage, daughter of complainant was not sent to Canada and on their asking, Rajwinder Kaur and Jasvir Singh assured to send her to Canada but after lapse of sufficient time, said persons refused to send her and threatened her and

during questioning and recording of statements, Rajwinder Kaur and her husband had acknowledged to receive Rs.13,50,000/- though they revealed that the same had been given to Jonathan Balwinder Dass. It was found that Rs.13,50,000/- was arranged by complainant by borrowing amount and for return of the loan borrowed, he had to sell his one acre of land. So, under the pretext of sending daughter of complainant to Canada after the marriage, the accused had induced complainant to pay a sum of Rs.13,50,000/- and thus cheated him. This report was then submitted and it was found that Jonathan Balwinder Dass, Rajwinder Kaur and Jasvir Singh were involved in the commission of offence and accordingly, case was got registered. On 5.09.2009, Rajwinder Kaur and Jasvir Singh were arrested but Jonathan Balwinder Dass could not be located and qua him, non-bailable warrants of arrest were issued. After completion of investigation, challan was presented in the Court.”

In support of its case, prosecution examined PW-1 Surinder Singh, complainant, PW-2 Rajinder Kaur, PW-3 Balbir Kumar, PW-4 Iqbal Singh, PW-5 LHC Ranjit Kaur, PW-6 Kuldeep Singh and PW-7 Inspector (Retd.) Darshan Singh.

In the statement under Section 313 Cr.P.C., the accused denied the incriminating evidence and pleaded their innocence. They stated that they had not committed any alleged offence and alleged amount has not been received by them. The amount was paid by complainant to Jonathan Balwinder Dass directly. Daughter of complainant has failed in her interview given to High Commission of Canada. Said Balwinder Dass had also preferred an appeal against the decision of High Commission, which was also declined by the Appellate Authority in Canada. They further deposed that the complainant party is black-mailing them under the threat of instant criminal case as they want to extort money from them.

Learned ACJM, Moga, after appreciating the evidence, convicted and sentenced the petitioner as stated above. However, co-

accused Jasvir Singh was acquitted. An appeal was filed by the petitioner and the same was dismissed by learned Addl. Sessions Judge, Moga, vide judgment dated 21.01.2016.

Aggrieved from the above-said judgments, present revision petition has been filed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

Record of the lower Courts was also requisitioned.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the lower Courts record.

From the perusal of the record and case of the prosecution, it is clear that Surinder Singh, Iqbal Singh and Balbir Kumar had gone to the house of Jasvir Singh and Rajwinder Kaur, where they were present. There took place a discussion with regard to marriage of daughter of the complainant and telephonic conversation was held with Jonathan Balwinder Dass and marriage was settled for an amount of ₹27 lakhs, out of which, half amount was to be given before marriage and remaining amount was to be paid when the girl reaches Canada. These facts itself show that accused never induced the complainant party to pay any amount. Rather, complainant party had gone to the house of Rajwinder Kaur and Jasvir Singh and they themselves taken the decision to marry daughter of the complainant with Jonathan Balwinder Dass for amount of ₹27 lakhs. From the perusal of these facts also, it looks that this amount of ₹27 lakhs was not to be given as a dowry, rather, it looks like an agreement to send the girl to Canada on the pretext of marriage. As per the facts of the case itself, half amount of ₹13.50 lakhs was to be paid before the marriage and remaining

when the girl reaches Canada. Furthermore, these facts itself show that at that very time in the house of Rajwinder Kaur, a telephonic conversation also took place with Jonathan Balwinder Dass, who is resident of Canada. It is clear from the evidence that it was only a paper marriage for the purpose of sending the girl to Canada, which means that complainant party was also a conspirator for sending the girl to Canada on the pretext of marriage. Otherwise also, there was no need to pay amount of ₹27 lakhs. If it is taken as it is, then it looks doubtful that Jonathan Balwinder Dass has not received any money and he had come from Canada, remained here in India for so many days.

As per the facts of the case, on 16.03.2007, complainant along with other persons had gone to the house of Jasvir Singh and Rajwinder Kaur. On 24.03.2007, they paid amount of ₹13.50 lakhs to Rajwinder Kaur. On 26.03.2007, marriage was performed and it was registered on 05.04.2007. After the registration of the marriage, there was no problem till 2008, when the VISA was rejected when the interview was taken by the Canadian Embassy. The daughter of the complainant failed to clear the interview and VISA was rejected. Even Jonathan Balwinder Dass filed an appeal before the Canadian Appellate Authority, which was also rejected. All these facts show that there was no intention on the part of Rajwinder Kaur to cheat the complainant from the very beginning. Rather, it shows that Jonathan Balwinder Dass and Rajwinder Kaur tried their level best to send the girl to Canada.

Furthermore, from the evidence on record, I find that payment of ₹13.50 lakhs to Rajwinder Kaur, is doubtful. As already discussed, why

purpose of taking her to Canada without any consideration. It looks from the evidence that Jonathan Balwinder Dass came to India to marry the girl, remained in India and had spent so much money, therefore, the major portion of money would have been taken by him and not by Rajwinder Kaur.

It has also been brought to the notice of this Court that divorce has already taken place between Jonathan Balwinder Dass and daughter of the complainant. Further, from the evidence on record, I find that there is unnecessary delay in reporting the matter to the police. When the appeal of Jonathan Balwinder Dass before the Canadian Appellate Authority was also dismissed and it was clear that the daughter of the complainant will not go to Canada, then, after gap of more than two years i.e. on 17.08.2009, an application was moved to the SSP, Moga and the FIR was registered on 05.09.2009, after a long delay, which has not been explained by the prosecution and this also creates doubt in the prosecution version. As already discussed, the fact that the amount of ₹13.50 lakhs was paid to Rajwinder Kaur, is also not proved by any cogent evidence.

In view of the above discussion, I find that both the Courts below have misread the evidence and have wrongly convicted accused-petitioner Rajwinder Kaur. Therefore, the impugned judgment of conviction and order of sentence dated 01.12.2014 passed by learned ACJM, Moga and judgment dated 21.01.2016 passed by learned Addl. Sessions Judge, Moga, are set aside and petitioner Rajwinder Kaur @ Rajinder Kaur @ Lalli is acquitted of the charges framed against her.

Therefore, finding merit in the present revision petition, the

same is allowed.

As petitioner Rajwinder Kaur @ Rajinder Kaur @ Lalli is on bail, her bail/surety bonds stand discharged.

August 30, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No