

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR No.1369 of 2017

Date of Decision: 23.8.2017

Ashish Bishnoi

...Petitioner

VERSUS

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present:- Mr. Deepanshu Matya, Advocate for the Petitioner.

Mr. D.R.Singla, Deputy Advocate General, Haryana.

SUDIP AHLUWALIA, J.

This Revision Petition is directed against the Judgment dated 29.03.2017 passed by the Court of Ld. Additional Sessions Judge, Gurugram in Criminal Appeal No.376 of 2016.

2. In dismissing the appeal filed by the Petitioner, Ld. Lower Appellate Court had upheld the Judgment dated 2.9.2016 of his conviction for the offence under Section 420 IPC passed by the Court of Ld. J.M.I.C. Gurgaon in Criminal Case No.105 of 2015, arising out of FIR No.43 Dated 22.2.2015 of Police Station Sushant Lok, Gurgaon. However, while sustaining the Judgment of conviction, the Appellate Court had reduced the term of sentence of the Petitioner of Rigorous Imprisonment from three years to that for two years and six months, although the sentence relating to payment of a fine of Rs.10,000/- was retained.

3. The charge framed against the Petitioner in the Trial Court on 4.8.2015 was that between the months of May to July 2014, in the area of

Police Station Sushant Lok, Gurgaon, he had fraudulently and dishonestly induced the complainant Sanjay Shrivastav to deliver/transfer an amount of Rs.90,00,000/- by misrepresenting that he would make the complainant as Partner in the Firm "Little Divas", which was being run by the Petitioner's wife Simmi Bishnoi, and had also misrepresented that he would get allotment of a plot/shop from HUDA in favour of the complainant, none of which commitments were actually fulfilled by him, and thereby he committed the offence(s) punishable under Section 420 of the IPC.

4. Ld. counsel for the Petitioner has assailed the Judgments of both the Ld. Courts below by contending that conviction of the Petitioner is based on wrong appreciation of the evidence on record, which according to him, is not sufficient to warrant conviction. In addition, it has been submitted that both the Courts below in their respective Judgments had specifically noted that no evidence at all was led from defence side after examination of the Petitioner under Section 313 Cr.PC. However, this observation is factually incorrect as evidence in the form of a certified copy of the Judgment of acquittal passed in favour of the Petitioner by the Court of Ld. JMIC, Gurgaon in another criminal case (101 SK), arising out of FIR No.112 dated 16.4.2015 under Section 420 of the IPC on virtually identical allegations, was led from defence side, which was even marked Ex.DX by the Ld. Trial Court, and which has not even been looked into by either of the Ld. Courts below.

5. It has also been argued that the FIR was lodged not only against the Petitioner but also against his alleged accomplice namely, Simmi Bishnoi, who according to the FIR was represented to be the Petitioner's own wife and had direct, active and equal role with him in commission of

the alleged offences, but for inexplicable reasons, her name as a co-accused was not sent up along with the Petitioner after completion of investigation.

6. In this regard, it may be observed that in this Revisional Jurisdiction, this Court is not expected to question the appreciation of evidence by the Ld. Courts below except in the event of manifest perversity apparent on the face of the record. Such perversity cannot be found in either of the Lower Courts' Judgments since important ingredients to constitute the offence of cheating being - (i) *Inducement by way of false promise; (ii) Actual delivery of property/money to the accused in view of such false promise*, have both been considered by the Ld. Courts below.

7. The inducements made by the Petitioner and his alleged accomplice/wife Simmi Bishnoi could not have been established by oral evidence, since it was nowhere the case that no such inducements were made in writing. The burden of proving this allegation is found to be more or less satisfactorily performed through the oral evidence of complainant Sanjay Shrivastav (PW-4) himself. Regarding the question of financial capacity and delivery of the consideration money in pursuance of the false promise extended by the Petitioner and his accomplice, the oral statements concerning cash payment as well as the exhaustive Bank Account details of the Petitioner's wife, which were taken into evidence and marked Exhibits, were also rightly found to be satisfactory by both the Ld. Courts below. To this extent therefore, the Petitioner's conviction for the offence of cheating under Section 420 IPC cannot be faulted.

8. It is however, verified from the Lower Court records that actually a certified copy of the Judgment of acquittal separately passed in favour of the Petitioner in another criminal case No.101 SK arising out of

FIR No.112 dated 16.4.2015 as already noted earlier, was actually led into evidence before the Ld. Trial Court and was marked Exhibit “DX” on 17.8.2016. Since it happens to be the certified copy of a Court's Judgment, it automatically becomes admissible in evidence. To that extent therefore, the observations of both the Ld. Courts below that no defence evidence was led in the case is clearly contrary to the record. This Court has gone through the aforesaid Judgment (Ex.DX). It is found therein that virtually similar allegations against the Petitioner were made in the concerned FIR No.112 and the complainant in that case was one Swastik Singh, a very close relative of the complainant in the present case.

9. Similarly, it is undeniable that according to the FIR and even subsequent evidence led in the Trial Court, the involvement of the Petitioner's accomplice Simmi Bishnoi, who was allegedly his wife, indicates her active and equal role in commission of the relevant offence, but for strange and inexplicable reasons, her name was not mentioned anywhere in the Final Report Form/Challan submitted after investigation which is available in the Lower Court records. At no stage during trial, the prosecution ever thought in terms of summoning such co-accused under Section 319 Cr.PC, although the culpability of the said accomplice could by no means be considered as less than that of the Petitioner himself.

10. In conclusion therefore, this Court is of the view that while conviction of the Petitioner under Section 420 IPC is undoubtedly correct, yet the period of imprisonment undergone by him would appear to be sufficient enough, particularly when the original sentence of three years was awarded to him in the light of submissions from the prosecution side that

“the convict is a habitual offender and many FIRs have been registered

against him for grievous offences and thereby the possibility of false implication of accused is ruled out". Had the Ld. Trial Court looked into the Judgment of acquittal (Ex.DX), which has been totally ignored, possibly the stringent sentence might not have been awarded against him especially in view of the fact that his active accomplice in the concerned offence was not even apprehended nor booked for trial in spite of having been specifically named from the very beginning.

11. For the aforesaid reasons, this Revision Petition is disposed off by observing that while conviction of the Petitioner for the offence u/s 420 IPC is sustained, but the sentence is ordered to be reduced to Rigorous Imprisonment for two years, although the sentence of fine is retained.

(Sudip Ahluwalia)
Judge

August 23rd, 2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***