

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

CRR No. 1717 of 2017 (O&M)

Date of Decision: August 02, 2017

Harbans Kaur

..... Petitioner

Versus

State of U.T., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. J.S. Thakur, Advocate,
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

Notice of motion.

On asking of the Court, Ms. Aashima Mor, A.P.P., for U.T.,
Chandigarh, accepts notice on behalf of the State.

This revision petition is directed against the judgment passed
by learned Additional Sessions Judge, Chandigarh, in Criminal Appeal
No. 64 of 2014, dated March 14, 2017.

Vide the impugned judgment, the Ld. Sessions Court had
affirmed an earlier judgment of conviction against the petitioner and co-
accused, namely Sandeep Singh, who is her son, passed on January 21,
2014, by the Ld. J.M.I.C., Chandigarh, in the criminal proceedings arising
out of F.I.R. No. 46, dated February 10, 2005, registered under

Sections 420/120-B, I.P.C., at Police Station Sector- 31, Chandigarh. Both the accused, including the present petitioner, were convicted of the offences under Sections 420, 120-B and 506 I.P.C. and were awarded sentences for imprisonment to the tune of two years, two years and one year, respectively, apart from imposition of fine.

The allegations against them were that they had cheated two persons, namely Harjinder Singh and Talwant Singh, of the amount of ₹ 4.2 Lacs on the pretext of sending those persons abroad. But, they did neither honour their promise, nor refund the money, taken from those persons in lieu of the responsibility brought upon themselves.

Learned counsel for the petitioner has argued that the impugned judgments are unsustainable basically for two reasons. Firstly, that there are contradictions in the statements of the witnesses, regarding the dates on which they allegedly first saw each other. The second reason happens to be the non-examination of material witnesses, such as one G.R. Bains, who allegedly assisted the victim, namely Harjinder Singh, in passing on the money to the accused persons. The acts imputed to the said G.R. Bains, as highlighted by learned counsel for the petitioner from the deposition of PW-1, namely Harjinder Singh, essentially indicate his own culpability in the matter of fraudulent transactions. By any logic, the said G.R. Bains, who appears to have been an accessory to the accused persons, according to PW-1's statement, could not have been expected to support the prosecution case, in any manner. Rather, failure of the Police to rope-in the said G.R. Bains as co-accused in the case is baffling.

It is further seen from the impugned judgment passed by the learned Additional Sessions Judge that non-examination of G.R. Bains as a material witness was also raised in the appeal, but did not find favour with the learned Appellate Court, which discarded the same by observing, *inter alia*, “that although, in the present case, the prosecution has not examined G.R. Bains, who had associated the complainant while going to the house of accused persons, but the entire prosecution version cannot be discarded merely on account of non-examination of G.R. Bains. Although, his examination would have definitely enhanced the credibility of the prosecution version, but his non-examination does not affect the reliability of the witnesses examined by the prosecution in the Court and a well proved case of the prosecution cannot be thrown out, merely on account of non-examination of one eye witness, when prosecution has examined four independent persons, who had made the payment of huge amount to the accused persons from their own accounts and their testimonies carry more weight than the proposed testimony of G.R. Bains.”

As noted earlier, the evidence on record clearly indicates the involvement of the said G.R. Bains to some extent in the shady transactions, and in the given circumstances, disinclination of the prosecution side to examine him as a witness cannot be faulted.

Admittedly, there are minor contradictions pertaining to certain dates, on which PW-4, namely Sukhpal Singh, allegedly first met the victims, namely Harjinder Singh and Talwant Singh. But by no means, these are of such magnitude as to hold the ultimate decision of both the learned Courts below as “manifestly perverse”.

For the aforesaid reasons, this Court finds no merit in the present revision petition, and the same is, accordingly, dismissed.

With the dismissal of the main revision petition, the miscellaneous application, pending if any, shall also stand disposed off.

August 02, 2017
Apurva

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No