

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

**CRR-2098-2017 (O&M)
Date of decision :26.09.2017**

Jaswinder Kaur alias Nishu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

CRM-18990-2017

This is an application filed by the applicant – petitioner for condonation of delay of 747 days in filing the present revision petition.

It is contended that the applicant – petitioner had been declared as a proclaimed offender though it was done wrongly. The applicant – petitioner was not aware of the same and she came to know about her conviction when she was arrested in the year 2016. She is a lady and for want of adequate financial resources and legal knowledge; it took time for her to approach this Court, resulting in delay of 747 days in filing the

revision petition.

Learned counsel for the petitioner has placed reliance on citation **Abdul Ghafoor and another vs. State of Bihar, 2012 (1) RCR (Criminal) 954** by Apex Court. It was a case when accused had filed revision petition after delay of 15 months, the delay was condoned observing that *in cases of conviction and imposition of sentence of imprisonment, the Court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case.* Therefore, learned counsel for the applicant – petitioner has prayed that the delay may be condoned.

The application is being opposed by the State counsel contending that no ground is made out for condonation of delay since the same was intentional and willful.

After considering the rival contentions I find that though there is a huge delay on the part of the petitioner in approaching the Court, however, in view of the ratio of authority referred to by learned counsel for the applicant – petitioner and considering the fact that it is always desirable that a lis should preferably be decided on merits rather than non-suiting a litigant on technical ground, the delay in filing the revision petition stands condoned.

CRR-2098-2017

Briefly stated prosecution story is that complainants – Sukhdev Kaur wife of Lakhmir Singh resident of Malout and Amrit Pal Singh son of Darbara Singh had submitted a written complaint dated 26.05.2005 addressed to S.S.P. of the District against Jaspal Kaur alias

Guddi wife of Manjit Singh her son Amandeep Singh, her husband Manjit Singh, her daughter Jaswinder Kaur alias Nishu and her husband Mohammad Khan Bhola residents of SST Nagar, Patiala for cheating them a sum of ₹10,55,000/- on the pretext of sending Amrit Pal Singh and Jaspreet Singh son of Sukhdev Kaur to Canada. Inter alia in the complaint, the complainants had contended that such accused persons met them at Gurudawara Dukh Niwaran Sahib, Patiala and induced them to pay ₹6,00,000/- each for sending Amrit Pal Singh and Jaspreet Singh to Canada; that on 04.10.2004 in the house of Jaspreet Singh at Malout, the accused persons came together and obtained ₹3,00,000/- from Amrit Pal Singh and ₹2,00,000/- from Jaspreet Singh, besides their signatures on certain documents on the pretext of Visa and passport of Jaspreet Singh; that at that time, Lakhmir Singh, Sukhdev Kaur, Darbara Singh, Shingara Singh uncle of Amrit Pal Singh, Binder Singh, Accountant and Mukhtiar Singh commission agent were present; that on 15.01.2005 the accused received ₹2,55,000/- from Jaspreet Singh and ₹3,00,000/- from Amrit Pal Singh and they showed certain documents proclaiming that to be visa and asked them to get ready for going to Canada from Delhi within two days. Subsequently neither they turned up nor sent them abroad and have not returned their money despite repeated demands; that on filing of complaint, the same was marked to In-charge Economic Offence wing and after inquiry of by SI Jalour Singh, In-charge Anti Fraud Staff, Muktsar, the complete report had been presented by the police against Jaswinder Kaur @ Nishu and Jaspal Kaur, whereas Jaspal Kaur – accused had already expired. After registration of FIR, the matter was investigated, accused including the present petitioner

were arrested, supplementary challan was also filed in the trial Court.

After complying with provision envisaged under Section 207 Cr.P.C. copies of documents were supplied to accused free of cost.

Finding a prima facie case, learned trial Court framed charge under Section 420 IPC against the accused, to which she pleaded not guilty and claimed trial.

In order to substantiate the allegations, the prosecution examined complainant Amritpal Singh as PW-1, Sukhdev Kaur complainant-cum-mother of aggrieved Jaspreet Singh as PW-2, Darbara Singh, father of Amritpal Singh as PW-3, Mukhtiar Singh, Commission Agent as PW-4 ASI Mohan lal as PW-5 and then evidence of prosecution was closed by order of the Court.

Statement of accused under Section 313 Cr.P.C. was recorded, in which all the incriminating circumstances appearing in the prosecution evidence were put to her, but she denied the same and pleaded her innocence and false implication in this case. The petitioner – accused opted to lead evidence in her defence, but closed the same without leading any evidence.

After hearing arguments learned Sub-Divisional Judicial Magistrate, Malout convicted the accused vide judgment dated 09.05.2012 and sentenced her to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- in default of payment of fine to further undergo rigorous imprisonment for a period of 20 days.

The accused felt aggrieved by the judgment of conviction and order of sentence passed on 09.05.2012 and filed an appeal before learned

Additional Session Judge, Sri Muktsar Sahib, however, she was unsuccessful there, her appeal was dismissed by learned Additional Sessions Judge Sri Muktsar Sahib vide judgment dated 13.02.2015. As such, the petitioner has approached this Court by way of filing the present revision petition praying that judgment passed by Additional Sessions Judge Sri Muktsar Sahib affirming the judgment passed by learned SDJM, Malout be set aside and accused be acquitted of the charge framed against her.

I have heard learned counsel for the parties, besides going through the record and I find that there is no defect in the judgment passed by the Court of learned Additional Sessions Judge Sri Muktsar Sahib, which might be called for interference by this Court.

First coming to the judgment passed by learned Magistrate, Malout who in para No.14 of the judgment had formulated following point for determination:-

“Whether on 04.10.2004, in the area of Malout in the residence of Sukhdev kaur and thereafter, on 15.01.2005, the accused dishonestly induced Jaspreet Singh to pay ₹2,00,000/- on 04.10.2004, ₹2,55,000/- on 15.01.2005, dishonestly induced Amrit Pal Singh to pay ₹3,00,000/- on 04.10.2004 and ₹3,00,000/- on 15.10.2005, on the pretext of sending them to Canada, but neither you sent them to Canada nor returned their money?”

The trial Magistrate has critically analyzed the contentions raised by both the parties and then came to affirm conclusion that charge for

offence under Section 420 IPC stood framed against present accused – petitioner.

In para No.16 of the judgment there is reference to the plea raised by defence counsel that complaint was initially filed against five persons out of them only two were challaned and real culprit Jaspal Kaur had died. Whereas present petitioner Jaswinder Kaur @ Nishu has been roped in simply for the reason that she happens to be daughter of Jaspal Kaur; this is pressure tactic to extract money from the family; that case was also filed against Sukhdev Kaur, however, after payment of money by her, the case was withdrawn; that during life time of Jaspal Kaur, no allegations were leveled against Jaswinder Kaur @ Nishu, it was only after her death that the allegations were made against the petitioner making total improvement. The witnesses had not named Jaswinder Kaur @ Nishu initially and they had taken her name while their statements were recorded in the Court by making improvement from earlier statement.

Learned trial Magistrate in para No.20 of the judgment has categorically observed that giving of sum of ₹3,00,000/- on 04.10.2004 and another ₹3,00,000/- on 15.01.2005 by Darbara Singh, father of Amrit Pal Singh, to the accused for sending his son to Canada is proved not only through the statement of PW-1 Amrit Pal Singh and PW-3 Darbara Singh but also from the statement of PW-4 Mukhtiar Singh, commission agent, who has produced and proved the account books entries regarding the payment of said money to Darbara Singh for sending his son Amritpal Singh to foreign country and that the self corroborating statements are sufficient to prove beyond any reasonable shadow of doubt that a sum of

₹6,00,000/- stood paid jointly to accused jaswinder Kaur @ Nishu alongwith her mother Jaspal Kaur, since deceased on the dishonest inducement of sending Amrit Pal Singh to Canada. Accused have failed to prove the return of said money. The accused have further failed to prove themselves to be working as Travel Agent. That means, the accused under the garb of fake Travel Agent have cheated Emigrant Amrit Pal Singh by dishonestly inducing him to pay ₹6,00,000/- for going to Canada where he was never sent and the sum of ₹6,00,000/- was also not returned.

However, with respect to Jaspreet Singh while detailed discussion in Para No.21, learned Magistrate has concluded that prosecution has failed to discharge said onus with respect to Jaspreet Singh. The minor discrepancies between statements of PWs have been discussed contending that human memories are bound to fade after passage of considerable period of time.

Dealing with statement of Amrit Pal Singh recorded by police on 30.08.2015 Ex.D1 it has been observed that same has not been signed by Amrit Pal Singh whereas complaint Ex.PA is signed by him. While appearing as PW-1, he had categorically taken name of Jaswinder Kaur @ Nishu. Accused Jasinder Kaur @ Nishu had not appeared before the Court initially and stood declared as P.O.. She was apprehended, when she was in custody in Central Jail, Patiala, in another case bearing FIR No.14 of 10.01.2001 under Section 4/5 of Immoral Traffic Act, Police Station Civil Line, Patiala and she was got produced from there.

The trial Magistrate from a critical analysis of the defence available on the record in the light of facts and circumstances has concluded

that allegations against the accused of cheating Amrit Pal Singh proved whereas it was not so as regards cheating Jaspreet Singh, Jaswinder Kaur @ Nishu was convicted and sentenced as detailed above. Then Jaswinder Kaur @ Nishu had challenged the said judgment in appeal, learned Additional Sessions Judge, Sri Muktsar Sahib had found himself in agreement with the conclusion arrived at by the trial Magistrate while dismissing the appeal.

The scope of revision petition is quite limited. The revisional Court is to interfere only if the order passed by the Court below is patently illegal and perverse which means the error in the order must be apparent on the face of it and the order passed should have been in gross violation of settled principles of criminal jurisprudence. The order in hand does not suffer from any such infirmity. It is well settled principle that revisional Court is not to upset the order passed by the Court below in a light manner simply because of the reason that another view in the matter is possible.

I do not find any illegality or infirmity in the judgment passed by Appellate Court much less the same to be perverse or having passed in violation of settled principle of criminal law as regards the conviction part. As per the custody certificate placed on file by the State counsel, she has undergone total sentence of 01 year, 01 month and 22 days including remission as on 24.08.2017, that means till date she has undergone total sentence of 01 year, 02 months and 02 days. No previous conviction is alleged or proved against the petitioner. She is a married lady, aged about 33 years, having two children i.e one son aged about 10 years and one daughter aged about 11 ½ years, who require constant maternal love and

affection for their proper bringing up. She is facing trial since 2008. I am of the considered view that ends of justice shall be adequately met if she is sentenced to imprisonment already undergone by her in this case. Therefore, the impugned judgment is upheld as far as the conviction part is concerned whereas remaining sentence part, the same is modified and she is sentenced to imprisonment already undergone by her in this case. She be released from custody if she is not required in any other case.

Intimation be sent to the quarter concerned.

26.09.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**