238 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2809-2017(O&M)
Date of decision: 31.10.2017

Darshna Devi and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vinay Kumar Gupta, Advocate
for the petitioners

Mr. A.S.Gill, Sr. DAG, Punjab.

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ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this petition is to the judgment dated 30.01.2015, passed by the Chief Judicial Magistrate, Moga, whereby, the petitioners were convicted under Section 420 IPC as well as the order of sentence dated 30.01.2015, vide which, the petitioners were sentenced to undergo rigorous imprisonment for a period of 1½ years with a fine of Rs.10,000/- each. In default payment of fine, they further undergo rigorous imprisonment for a period of six months. The appeal filed by the petitioners was also dismissed by the Lower Appellate Court vide its judgment dated 01.08.2017.

The brief facts of the case are that on 20.08.2007, complainant-Surinder Kumar Chug, Manager of UCO Bank lodging a complaint with the police that the petitioners qua mother and son have approached this Bank for grant of loan of Rs.7 lacs and had produced a title deed dated 12.10.1988 in favour of petitioner-accused, namely, Darshana Devi. Considering the same, the loan of Rs. 7 lacs was sanctioned. However, later on, the Bank came to know through a newspaper dated 07.08.2007 that the petitioners have committed some fraud and the title deed of property was examined and it was found on verification of the Patwari that the property which was mortgaged with the Bank by petitioner No.1 Darshana Devi was partly sold to one Harinder Singh Sodhi, vide sale deed dated 15.11.2006.

On completion of investigation, the report under Section 173 Cr.P.C. was submitted and the prosecution, led its evidence. On conclusion of evidence, the statements of the accused under Section 313 Cr.P.C. were recorded in which they pleaded innocence.

The learned trial Court, vide its impugned judgment dated 30.01.2015, held that the total property owned by accused-Darshna Devi was 9 marlas, out of which, she has sold 4 ½ marlas of the same to Harinder Singh Sodhi and therefore, while mortgaging the said house with the Bank for the purpose of obtaining loan of Rs.7 lacs, both the petitioners have cheated the Bank.

The finding recorded by the trial Court was affirmed by the Lower Appellate Court, vide impugned judgment dated 01.08.2017.

Learned counsel for the petitioners has submitted that it has come in the statement of the complainant PW-4 that he has verified about the sale deed, when read a publication in the newspaper regarding some fraud by the petitioners and then verified the ownership of the property of accused-Darshna Devi through the Revenue Patwari. It is thus submitted that verification, if any, was to be made before sanctioning of the loan and the petitioners while applying for loan, submitted the title deed as it is. It is further submitted that if for the sake of argument, it is taken that half of the property was sold, still the petitioner No.1-Darshna Devi was owner of the property i.e. 4 ½ marlas and the same was sufficient for obtaining the loan by way of mortgaging the same with the Bank. At any stage, the bank never demanding additional security for purpose of mortgaging in lieu of security against the loan.

It is further submitted that from the evidence led by the prosecution, it is nowhere proved that the petitioners were declared defaulters for the loan of Rs. 7 lacs, taken by them against the mortgage of the property of Darshna Devi or that the Bank, was not in a position to recover the loan amount as against the existing ownership of 4 and a half marlas of Darshna Devi.

It is thus further submitted that in fact, the complainant-PW-4 Manager in order to escape of his own liability, wrongly got the FIR registered against the petitioners. It is further submitted by the petitioners that petitioner No.1-Darshna Devi has already undergone 3 months and 02 days of actual sentence and similarly, petitioner No.2-Mukesh has undergone about 7 months of actual sentence, out of 1½ years awarded by the trial Court and they are not involved in any other case and they had no intention to cheat the Bank. It is lastly, submitted that since the petitioners have already undergone substantive sentence awarded by the trial Court, it be reduced to already undergone by them.

On the other hand, learned State counsel has filed the custody certificate of both the petitioners and has not disputed the actual sentence undergone by them as stated by learned counsel for the petitioners.

Considering the fact that the petitioners have restricted the prayer with regard to reducing the sentence of the petitioners, already undergone by them; in view of the fact that it has not come on record the petitioners, at any stage, was declared defaulter by the bank qua loan obtaining by Darshna Devi; it has also not come on record that the remaining ownership of 4 ½ marlas of the property was not sufficient for sanctioning the loan of Rs.7 lacs and also in view of the fact that the petitioners have faced the agony of protected trial since 2007 i.e. for a period of 10 years, I deem it appropriate to reduce the sentence of the petitioners awarded by the trial Court to already undergone by the petitioners.

However, considering the aforesaid fact, the fine of Rs.10,000/- awarded by the trial Court is reduced to Rs.2,000/- each and the petitioners are directed to deposit the fine within a period of one month from today with the trial Court/Chief Judicial Magistrate, Moga for the aforesaid modification. This appeal is disposed of, the petitioners shall be released forthwith, they are not required any other case.

(ARVIND SINGH SANGWAN)
JUDGE

31.10.2017
Hemlata

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