

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.3120 of 2017 (O&M)

Reserved on : 25.9.2017

Pronounced on:-28.9.2017

Daljit Singh alias Bittu

..Petitioner

versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Amaninder Singh Sekhon, Advocate, for the petitioner.

RAMENDRA JAIN, J (ORAL)

The instant revision petition under Section 401 of the Code of Criminal Procedure is directed against the judgment dated 04.07.2017 passed by learned Additional Sessions Judge, Moga, dismissing the appeal of the petitioner against the judgment of conviction and order of sentence dated 06.12.2016 of learned Sub Divisional Judicial Magistrate, Nihal Singh Wala, holding the petitioner guilty and convicting him to undergo rigorous imprisonment for three years with fine of ₹ 8000/- under Section 420 of the Indian Penal Code (for short "IPC") and rigorous imprisonment for two years with fine of ₹2000/- under Section 471 IPC. In default of payment of fine, the petitioner was ordered to further undergo rigorous imprisonment for two months for each offence.

Briefly stated, FIR No.48 dated 20.05.2012 was registered under sections 420, 465, 467, 468 and 471 IPC at Police Station Nihal Singh Wala, on an application dated 02.12.2011 of the complainant Ajaib Singh

that the petitioner had cheated him of ₹ 3,00,000/- on the pretext of sending him abroad. For the said purpose, the petitioner took passport and photographs etc. and handed over a forged visa to the complainant having its validity from 29.05.2008 to 28.05.2011. The petitioner neither sent the complainant abroad nor returned his money, despite promise in the Panchayat to return the money with interest.

After completion of investigation and other necessary formalities, final report under Section 173(2) Cr.P.C. was presented in the Court against the petitioner.

The trial court, after completion of the trial, held the petitioner guilty and convicted him in the manner as narrated above in the opening paragraph of this judgment.

The petitioner remained unsuccessful before the first appellate court also as his appeal was dismissed on 04.07.2017.

Learned counsel for the petitioner contends that no specific name of the country was mentioned by complainant Ajaib Singh in his complaint for which the petitioner had, allegedly, promised him to send abroad, therefore, the complaint, on the face of it, is false. The prosecution did not produce the passport of the complainant on record to show as to whether he was having any valid passport to go abroad, therefore, the prosecution has not been able to prove guilt of the petitioner beyond reasonable doubt. The prosecution also did not lead any evidence to show that the petitioner was indulged in such type of business of sending people abroad, inasmuch as nothing has been brought on record that the petitioner was having any firm or any address from where he was, allegedly, doing such business. The prosecution also did not lead any evidence about

inducement of the complainant by the petitioner, therefore, ingredients of Section 420 IPC were not fulfilled against the petitioner. The prosecution also did not lead any evidence as to from where the alleged visa handed over to the police was got prepared and forged by the petitioner. Further, source of money of the complainant was also not proved by the prosecution on record, therefore, the conviction of the petitioner is liable to be set aside.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, this court is of the considered opinion that the revision, being without any merit, deserves to be dismissed for the reasons to follow:-

Ajaib Singh, the complainant, to prove his case, stepped into the witness box as PW1 and deposed that he moved an application dated 02.12.2011, Ex.P1, to the Station House Officer, Police Station Nihal Singh Wala and identified his signatures thereon. He also produced on record the original forged visa handed over to him by the petitioner in the presence of his son-in-law Lakhvir Singh and proved the same as Ex.MO1. While appearing in the witness box as PW2, Lakhvir Singh, an eye witness of the case, corroborated the version of the complainant. Shri K.D.Sharma, DSP, Vigilance Bureau Patiala, conducted an inquiry into the matter, submitted his report Ex.P2 and supported the case of the prosecution in its entirety. HC Karamjit Singh, the Investigating Officer, appeared into the witness box as PW4 and reiterated the version of the prosecution. He proved arrest memo of accused as Ex.PW4/A and personal search memo of accused as Ex.PW4/B.

It has been established on the record beyond doubt that even after lengthy cross-examinations conducted by the learned defence counsel,

the testimony of PW1 Ajaib Singh and PW2 Lakhvir Singh, remained unshattered. PW1 Ajaib Singh has deposed that he paid ₹50,000/- along with his passport to the petitioner at his house in presence of PW-2 Lakhvir Singh. Thereafter, he further handed over ₹2,50,000/- to the petitioner in presence of PW2 Lakhvir Singh, which the petitioner further handed over the said money to his sister Harjit Kaur and his mother, who counted the said amount and kept the same in their house. That apart, from the testimony of the aforesaid witnesses, it is abundantly clear that the petitioner handed over the copy of the visa to the complainant having validity from 29.5.2008 to 28.5.2011, which, on inquiry, was found to be forged. Therefore, in the facts and circumstances of the case, the requirement of proving an offence under section 420 IPC, in my considered opinion, is legally fulfilled, inasmuch as the petitioner, in the first instance, induced the complainant on the pretext of sending him abroad and then duped him with dishonest intention for ₹3,00,000/- in the presence of PW2 Lakhvir Singh, after showing him the copy of alleged forged visa prepared by him. The plea of the learned counsel for the petitioner that the prosecution did not lead evidence about inducement of the complainant by the petitioner and therefore, ingredients of Section 420 IPC are not fulfilled, can not, at all, be countenanced, keeping in view the testimony of PW1 Ajaib Singh and PW2 Lakhvir Singh, an eye witness of the case, who have categorically deposed before the trial court with respect to handing over ₹3,00,000/- by PW1 Ajaib Singh to the petitioner. A positive finding, to this effect, on the strength of testimony of the abovesaid witnesses, has also been recorded by both the courts below that money was paid to the petitioner, which he did not return.

An argument that the prosecution has not been able to adduce any evidence to show that the petitioner was having any firm from where he was, allegedly, doing such business, has no legs to stand, especially when it has been established on the record beyond reasonable doubt, as noted above, that the petitioner had cheated the complainant of ₹3,00,000/- on the pretext of sending him abroad by showing original copy of visa to him, knowing or having reason to believe the same is forged. That apart, the petitioner, in his statement recorded under Section 313 of the Code of Criminal Procedure or in his defence, did not deny the factum of handing over the forged visa to the complainant nor was there any suggestion put to PW1 Ajaib Singh, the complainant, and other witnesses qua the said fact. Rather, the petitioner, in his statement recorded under Section 313 of the Code of Criminal Procedure, took a plea that the complainant had paid the money to one Kulwinder Singh, resident of village Pandore, but had implicated him as his village was near the village of the complainant, which fact clearly spells out that the petitioner has himself admitted the factum of receiving the money from the complainant. If at all, the petitioner had not received the money from the complainant, he would have produced said Kulwinder Singh to prove his stand as a witness in his defence, but was not examined for the reasons best known to him. In my considered opinion, the learned trial court, on account of non-examination of said Kulwinder Singh, has rightly drawn an adverse inference against the petitioner stating that he could be the best witness to prove the stand taken by him. The complainant was not required to prove from where the petitioner managed the alleged forged visa having its validity from 29.5.2008 to 28.5.2011. Rather, it is the petitioner who cheated the complainant of his hard earned money by

handing over a forged visa to him on the pretext of sending him abroad without disclosing the name of the country. In the facts and circumstances of the case, this court is of the view that such types of persons who are indulged in illegal activities by alluring innocent persons to send them abroad with the sole motive to cheat for their hard earned money, should be dealt with iron hands, so that they could not dare to commit such type of offence in future.

The concurrent findings recorded by the learned courts below that the petitioner duped the complainant of ₹3,00,000/- on the pretext of sending him abroad fraudulently by showing a forged visa and did not return the money, despite promise in the panchayat, in my considered view, do not call for interference and the same are affirmed.

Consequently, the revision filed by the petitioner fails and is hereby dismissed.

28th September, 2017
jitender sharma/VK

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No