

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

**CRR No.587 of 2017
Decided on: 20.09.2017**

Surinder Kaur

....Petitioner

Versus

Lachmi Devi and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vishal Sharma, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

The present revision petition has been filed challenging the order dated 16.09.2014 passed by the trial Court acquitting the respondents/accused in FIR No.64 dated 15.07.2012 registered under Sections 406 and 420 of the Indian Penal Code (in short 'IPC') at Police Bilga, District Jalandhar as well as the order dated 03.11.2016 passed by the Appellate Court, dismissing the revision filed by the petitioner/complainant.

Brief facts of the case are that on 15.07.2012, Surinder Kaur (complainant) wife of Balwinder Ram filed a complaint against Lachhmi Devi and Naresh Rani alleging that she (Surinder Kaur) was induced by Lachhmi Devi that she would send her to Cyprus as she and her friend Naresh Rani had sent many persons abroad and got them settled there providing good jobs. Lachhmi Devi told the complainant that her daughter Kaushalya Devi and Anil Kumar son of Naresh Rani are also settled in Cyprus. The accused – Lachhmi Devi further told her that Kaushalya Devi and Anil Kumar would prepare the necessary

documents and she will also send her at Cyprus. Lachhmi Devi demanded Rs.4,50,000/- for the said purpose. On 14.03.2012, the complainant along with her husband and Vir Chand went at the house of Lachhmi Devi and gave Rs.2,50,000/- to her. Lachhmi Devi took copy of passport from the complainant and told her that remaining amount shall be paid when the papers from abroad would be received. Thereafter, Lachhmi Devi sent a message to the complainant that she has received the papers from Cyprus and the complainant should come with the balance amount of Rs.2,00,000/-. The complainant along with her husband and Balvir Ram went to the house of Lachhmi Devi on 04.04.2012 and handed-over the balance amount and received the ticket and other relevant documents from Naresh Rani, on the asking of Lachhmi Devi. When the complainant reached Cyprus, Kaushalya Devi and Anil Kumar came in the evening and told the complainant that she has to indulge in sex trade and she was called only for the said purpose. On hearing the same, the complainant was shocked and refused to do any such act. On her refusal, they left the complainant there. The complainant came back to India on 16.04.2012 after facing lot of troubles and thereafter, she along with her husband, son and the respectables met the accused and demanded her money back. Both the accused admit their guilt in Panchayat and sought one week's time to return the amount but despite this, they did not come on 26.04.2012 before the Panchayat. Hence, the complaint was filed by the complainant.

After submission of the challan, the respondents/accused were charge-sheeted by the trial Court under Section 420 IPC to which

they did not plead guilty and claimed trial.

The prosecution examined PW1 – Vir Chand who stated that his neighbour Balwinder Ram told him that he is sending his wife Surinder Kaur to Cyprus and he has to give Rs.2,50,000/- to accused – Lachhmi Devi and asked him to accompany to the house of accused. In his presence, an amount of Rs.2,50,000/- was handed over to accused – Lachhmi Devi by Balwinder Ram. PW2 – Balbir Ram stated that he has given a sum of Rs.2,00,000/- to accused – Naresh Rani in the house of Dr. Romi for sending his wife abroad. PW4 – Bhulla Ram stated that he had given Rs.22,500/- to his son – Balwinder Ram after withdrawing the same from the society and produced the copy of passbook as Ex.PW4/A. Similarly, PW5 – Piara Ram and PW – Ram Kishan stated that they have lent some amount to Balwinder Ram who took the same for sending his wife abroad. PW7 – ASI Nirmal Singh stated that after receiving the copy of FIR, he conducted the enquiry and arrested the accused – Lachhmi Devi as well as Naresh Rani and proved the FIR Ex.PW7/A, the application of the complainant Ex.PW7/B, the enquiry report of DSP Ex.PW7/C apart from the documents i.e. search memo, disclosure statement as Ex.PW7/E to Ex.PW7/H. PW9 – Yash Pal, a Manager of the Canara Bank proved that one Jaspal Singh has withdrawn Rs.1,50,000/- from his bank. PW11 – Gian Parkash, a Clerk from the Passport Office proved the passport of Surinder Kaur as Ex.PW10/A. PW13 – Kunal Sanyal, a Manager of UCO Bank proved the statement of account of Balwinder Ram and PW14 – Tirath Ram, Secretary, Co-operative Society also proved that certain amounts were withdrawn by Bhulla Ram and Balwinder Ram. The rest of the

prosecution witnesses were formal witnesses.

The prosecution evidence was closed by Court order and thereafter, the statement of accused was recorded under Section 313 Cr.P.C. to which they pleaded false implication.

After hearing counsel for the parties, the trial Court acquitted the respondents/accused of the charges by holding that the offence under Section 420 IPC is not made out. The appeal filed by the petitioner/complainant was also dismissed by the Lower Appellate Court vide its judgment dated 21.10.2015. Thereafter, the present petition has been filed.

Counsel for the petitioner has submitted that it is proved from the prosecution evidence that husband of the petitioner namely Balwinder Ram has paid the amount to accused – Lachhmi Devi and Naresh Rani for sending his wife abroad. It is further submitted by counsel for the petitioner that the petitioner though went abroad but she returned back and thereafter, the accused persons have failed to return the money. It is, thus, proved that the complainant travelled abroad and thereafter, she came back to India and thus, the accused have cheated her and offence under Section 420 IPC is made out.

After hearing counsel for the petitioner, I find no merit in the present case. The Lower Appellate Court has recorded the following findings while dismissing the appeal:-

“14. From the above cross-examination, it is clear that the ticket for Cyprus was arranged by the accused and on that very ticket, she went to Cyprus. She also admitted that she did not spend any amount for the purchase of ticket and visa for Cyprus country. It is also

admitted by the complainant that her ticket for coming back to India was also purchased by Anil Kumar son of accused – Naresh Rani, who was residing in Cyprus. Thus, it is clear that the entire money for taking the complainant to Cyprus was spent by the accused and even the amount which was required to be spent for return of the complainant to India was spent by Anil Kumar, son of accused Naresh Rani, who was in Cyprus and no money was spent by the complainant either for going abroad or for coming back.

15. *Secondly, with regard to the work in Cyprus, the complainant has admitted that though she had visa for four months but she returned from Cyprus within seven days and did not stay there for four months. She did not work of any type in Cyprus country. She also admitted that the accused has not to get arranged work for her in Cyprus.*

Thus, admittedly, there was visa with the complainant for four months but she returned within seven days. PW2 Balwinder Ram has admitted that in the visa, it was clearly mentioned the words “DOMESTIC WORKER”. If the complainant had gone to work as “DOMESTIC WORKER” and had visa for four months then it is un-understandable that why she returned within seven days especially when she did not do any work there though she had sufficient time to procure work for her. There is nothing on record that she was ready to do the DOMESTIC WORK but it was the accused, who compelled her to return back to India. Even otherwise, no such agreement has been brought on record to show that it was the duty of the accused to get the job for the complainant in Cyprus. The complainant herself admitted in her cross-examination that the duty of the accused was not to do work in that country for her.

16. The next allegation of the complainant against the accused is that she was forced by Kaushalya daughter of accused Lachhmi Devi and Anil Kumar son of accused Naresh Rani to indulge in Sex Trade. The complainant in her examination-in-chief stated that on the very first day, she reached Cyprus, she was taken to a flower shop where Kaushalya and Anil Kumar told her that she is brought here only to get her indulged in Sex Trade and she has to do such work, in case she wants to stay there but on her refusal, she was left there alone. Thereafter, there is no explanation on record that after their going away, how Anil Kumar arranged a ticket for the complainant for her return to India from his own pocket. In case, the intention of the accused was to get the complainant indulged in Sex Trade then they would not have arranged the ticket for the complainant to enable her to return India. This clearly shows that there was no dishonest intention on the part of the accused.

17. Further, the complainant in her examination-in-chief stated that when she was asked by Anil Kumar and Kaushalya that she had to indulge in Sex Trade, she immediately informed her husband about the said work. However, by going through the testimony of PW Balwinder Ram, husband of the complainant reveals that he admitted in his cross-examination that his wife did not consult him before returning nor any talk in this respect took place. On one hand, the complainant alleges that she had disclosed the entire story immediately to her husband but on the other hand, her husband Balwinder Ram who appeared as PW2, has admitted that his wife did not consult him before returning back. This admission on the part of PW2 Balwinder Ram, falsifies the statement of the complainant that she narrated the whole incident to her husband. Even otherwise, in case, her husband was aware of the said

alleged fact of forcing the complainant in Cyprus by Anil Kumar son of accused Naresh Rani and Kaushalya daughter of accused Lachhmi Devi to indulge in Sex Trade, there is nothing on record to show that the husband of the complainant took any step against the accused with the police immediately.

18. Moreover, there is delay in lodging in FIR which is not explained and it shows that the FIR was got registered after due deliberations and consultations.

As per the complaint Exhibit PW7/B, on coming to know about the said fact, Balwinder Ram and his son approached the accused Lachhmi Devi and Naresh Rani and asked them about the incident happened with the complainant and the accused got their signatures on the blank stamp paper but in his examination-in-chief, PW Balwinder Ram never stated that the accused Lachhmi Devi and Naresh Rani forced him and his son to sign on blank stamp papers on 12.04.2012. If these papers were got signed in blank from the husband and son of the complainant forcibly under duress and pressure and they were to remain silent till the complainant returns India, in order to save her in Cyprus, then the complainant, her husband and son would have immediately move the complaint before the police regarding the alleged incident on 16/17.04.2012 itself when the complainant returned India but there is delay in moving the complaint/lodging the FIR. By going through the complaint Exhibit PW7/B reveals that it was moved before the police on 01.05.2012 which was marked to the DSP, Phillaur for enquiry. The explanation which is given in the complaint Exhibit PW7/B is that the complainant, her husband and son approached the accused alongwith respectables and convened panchayat and before the panchayat, the accused admitted their guilt and promised to return the

amount on 26.04.2012 but they did not come present before the Panchayat. Even after 26.04.2012, there is no explanation as to why they moved the complaint before the police only on 01.05.2012. Even there is no independent corroboration that any panahayat, as alleged by the complainant was convened. No member of the panahayat has been examined by the prosecution. Even the Sarpanch Gurmukh Singh who signatures are alleged to be there on the writing of the panchayat dated 26.04.2012, has not been examined by the prosecution in order to prove the said writing.

By going through the entire evidence led on record, it clearly proves that the basic ingredients of Section 420 of the Indian Penal Code are not made out against the accused/respondents. The prosecution witnesses have failed to prove on record that both the accused Lachhmi Devi and Naresh Rani cheated the complainant Surinder Kaur by dishonestly inducing her to deliver Rs.4,50,000/- for sending her to Cyprus and to arrange job for her. It is clearly proved on record, the complainant Surinder Kaur was sent by the accused to Cyprus as per their promise. There is nothing on record to prove that it was the duty of the accused to arrange job for the complainant in Cyprus and it is the accused who dishonestly got her returned back. Rather, it is also clearly proved that it is the complainant Surinder Kaur who herself returned back to India withing a week from Cyprus though she had visa for four months.

19. *Thus, the offence against the accused/respondents Lachhmi Devi and Naresh Rani with which they were charged, is not proved and the learned trial Court has rightly acquitted them of the charges framed against them.”*

A perusal of the statement of the complainant – Surinder

Kaur who appeared as PW10 show that the accused persons arranged Visa in which it is mentioned as 'domestic worker' and ticket for her for a period of 04 months but she returned back to India as she did not want to stay in Cyprus. The counsel for the petitioner has also failed to explain the delay in lodging the FIR. The other allegations levelled by the complainant regarding forcing her into a sex trade at the instance of the complainant is also not proved from the statement of her husband i.e. PW2 – Balwinder Ram, who has stated that the complainant never consulted him before returning back to India which show that this allegation of returning back to India is an afterthought. Thus, the Courts below have rightly recorded a finding that the ingredients of Section 420 IPC are not made out. The complainant returned back to India on 17.04.2012 and the complaint was lodged on 01.05.2012. The explanation given by the complainant that before approaching the police, a Panchayat was convened is also not proved as no member of the Panchayat was either cited as a prosecution witnesses or examined in the Court.

For the foregoing reasons, finding no merit, the revision petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

20.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No