

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CRR No.3075 of 2011**

DATE OF DECISION: NOVEMBER 20, 2018

RAJIV KUMAR ...PETITIONER

VERSUS

STATE OF HARYANA & ANOTHER ...RESPONDENTS

2. **CRR No.492 of 2012**

GAURAV GOEL ...PETITIONER

VERSUS

RAJIV KUMAR & ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ARIHANT JAIN, ADVOCATE
FOR THE PETITIONER IN CRR No.3075 of 2011
& FOR RESPONDENT NO.1 IN CRR No.492 of 2012

MR. HARBIR SINGH SANDHU, AAG, HARYANA.

MR. A.K. KANSAL, ADVOCATE
FOR RESPONDENT NO.2 IN CRR No.3075 of 2011
& FOR THE PETITIONER IN CRR No.492 of 2012.

MANOJ BAJAJ, J.

CRR No.3075 of 2011 has been filed by the petitioner-convict challenging the judgement dated 30.11.2011 passed by Addl. Sessions Judge, Jind, whereby the judgement dated 18.9.2009 passed by the Addl. Chief Judicial Magistrate, Jind, in a complaint case convicting the appellant under Section 420 IPC was set aside, but his conviction under Section 406 IPC and sentence to undergo R.I. for 2 years and to pay a fine of ₹3000/-

and in default of payment of fine, to undergo further period of S.I. for 1 month was maintained.

CRR No.492 of 2012 has been preferred by the complainant against the judgement dated 30.11.2011 passed by Addl. Sessions Judge, Jind whereby the conviction of co-accused Megh Raj under Sections 406 and 420 IPC and conviction and sentence awarded to accused-petitioner under Section 420 IPC and payment of compensation of ₹50,000/- as ordered by the trial Court were set aside.

The case of the prosecution is based on a complaint made Gourav Goel to the effect that he was unemployed and known to the petitioner who claimed himself to the owner of M/s Meghraj Rajiv Kumar Brick Kiln Company, Nidani. It was alleged in the complaint that on 8.1.2002, the accused-petitioner offered complainant a partnership to the extent of 25% by investing a sum of ₹6 lakhs in his brick-kiln. The complainant agreed and paid ₹6 lakhs to the petitioner Rajiv Kumar on 20.1.2002, and a receipt was issued by the petitioner and on 25.01.2002, a Partnership Deed was executed showing the complainant as partner to an extent of 25% without disclosing the fact that the said brick-kiln and other properties relating to him were already mortgaged with the bank, thereby cheated him and on being asked to return the whole amount, the accused refused for the same and handed over only a sum of ₹1,13,450/- with an assurance to pay the remaining amount later. The bricks lying in the brick-kiln were also handed over to the complainant, but later on the accused party also started selling it of their own without the permission of the

complainant. Further, that on 29.10.2003, when the complainant demanded the remaining amount, he was threatened with dire consequences.

On the basis of the the above complaint, the accused were summoned to face the trial for the offence punishable under Sections 406 and 420 IPC. The complainant examined himself as PW1 alongwith other witnesses. Statement of the accused were also recorded under Section 313 Cr.P.C. The accused pleaded false implication. However, in defence, the accused examined 3 witnesses.

The learned trial Court after examining the material available on record held the petitioner and Megh Raj guilty for the offence punishable under Sections 406 and 420 IPC and sentenced them to undergo R.I. for 2 years and to pay a fine of ₹3000/- each and in default of payment of fine, to undergo further period of S.I. for 2 months in respective Sections. However, in appeal, the conviction and sentence of Megh Raj under Sections 406 and 420 IPC and conviction and sentence of petitioner under Section 420 IPC was set aside. However, the conviction and sentence of the petitioner under Section 406 IPC was maintained.

Learned counsel appearing on behalf of the petitioner has contended that he does not press challenge to the conviction part in the impugned judgement and restricts his prayer only with regard to quantum of sentence.

Learned counsel for the petitioner contended that since the matter pertains to the year 2002, the petitioner has already suffered the agony of protracted trial and appeal for more than 16 years. He further

argued that no useful purpose would be served to put the petitioner behind bars once again. Learned counsel submits that the sentence of the petitioner may be reduced to the period already undergone by him. In support of his contention, learned counsel for the petitioner relied upon the judgement of this Court in *Joginder Pal vs. The State of Punjab, Crl.Revision No.758 of 1981, decided on 6.12.1982*, wherein in a similar offence, this Court was pleased to reduce the sentence of the petitioner to the one already undergone by him.

Learned State counsel, on the other hand, opposed the prayer made the learned counsel for the petitioner. He has submitted that the petitioner has only undergone 1 month and 13 days of imprisonment out of the awarded sentenced of 2 years.

I have heard learned counsel for the parties and have perused the case file.

As the learned counsel for the petitioner has not disputed the conviction of the petitioner and has confined his prayer only to reduction in sentence awarded, therefore, keeping in view the fact that the complaint pertains to the year 2002 and the petitioner has faced the agony of trial and appeal for the last more than 16 years and the view taken by this Court in *Joginder Pal's case (supra)*, this Court is of the opinion that no useful purpose would be served by sending the petitioner in custody again for serving the remaining portion of his sentence and ends of justice would be met, if the sentence of the petitioner is modified and reduced to the one already undergone by him.

In view of the above, while upholding the conviction of the petitioner under Section 406 IPC, the sentence of the petitioner is modified to the one already undergone by him. The petitioner is on bail. His bail bonds and surety bonds shall stand discharged. It is made clear that in case the fine is not paid, the petitioner shall undergo the default sentence.

CRR No.3075 of 2011 stands disposed off.

In view of the aforesaid discussion and reduction of sentence of the petitioner, nothing survives for consideration in CRR No.492 of 2012 filed by the complainant and, therefore, the same is dismissed.

November 20, 2018
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No