

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

CRR No.3648 of 2017 (O&M)

Date of Decision: 19.03.2018

Abdul Khan @ Atiq Mohammad

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Anutej Singh Barnala, Advocate for the Petitioner.

Mr. Manish Bansal, Deputy Advocate General, Haryana.

SUDIP AHLUWALIA, J.

This revisional application is directed against the impugned Judgment passed by the Ld. Addl. Sessions Judge, Hisar dated 3.8.2017 in Criminal Appeal No.72 of 2015, whereby the appeal filed by the present Petitioner against the Judgment of Ld. Judicial Magistrate Ist Class, Hansi in Criminal Case No.537-1 of 2011 dated 28.11.2014 was dismissed.

2. The Trial Court had convicted the present Petitioner vide the aforesaid Judgment, of the offence under Section 420 read with Section 34 of the IPC, and had awarded the sentence of RI for three years apart from a fine of Rs.3000/- upon him, which Judgment of conviction was maintained by the Ld. Appellate Court.

3. The contention raised on behalf of Petitioner before this Court is that not only his conviction is untenable but even the sentence awarded to him is unduly harsh.

4. The facts alleged in the FIR on the basis of which, the Petitioner was subsequently tried and convicted, are that the present case was registered on the basis of complaint of Subhash Chander son of Ram Nath. He alleged in his complaint that on 15/16.07.2010, he saw an advertisement at the cable T.V. Hansi that one Tantrik who was in a Hotel situated in front of bus stand of Hansi removed the sorrow of persons. He was in pain due to his family circumstances. On 22.07.2010, he went to the Tantrik for removal of his sorrows. He found one old Tantrik and his two other men there. He described his sorrows to the Tantrik who demanded Rs.15,000/- for removing his sorrows. On inquiry, the Tantric disclosed his name as Nazir Ahmad, and in good faith, he arranged Rs.15,000/- on the same day and gave it to Nazir Ahmad in a room of the Hotel. After two-three days, he again went to the hotel and at that time, two other Tantrics were present with Nazir Ahmad. He told Nazir Ahmad that his sorrows were still not removed. Then, the Tantrik asked him to bring gold ornaments of his house for removal of his sorrows. On the same day, he brought gold necklace, ear rings, Mangalsutra, bracelet etc. from his house and handed over the same to the Tantrik. The Tantrik put gold ornaments in two lids and spread rose etc. on those lids. He tied the mouths of those lids with black cloth. The Tantrik Nazir Ahmad then asked him to bow his forehead before him. He bowed his head there. The Tantrik then gave him the lids tied with black clothes. Nazir Ahmad then asked him to open the lids after seven days. He returned to his house and put the lids there. After seven days, he opened the lids and found his ornaments missing. The same day, he went to the Hotel and found that the room of the Tantrik was locked. On inquiry, he learnt that Nazir Ahmad was a resident of Delhi and Abdullah Khan and

Ikbāl Khan were residents of Meerut. He waited for them for some time. On 6.08.2010, he got a telephone call on his mobile No.9813228730 from mobile No.9992591893 at 11-40 A.M. and a threat to kill him was given. The person who made a telephone call to him disclosed his name Abdullah. He therefore, lodged the FIR against the three persons by alleging that they had cheated him of his money and gold ornaments.

5. It has been contended on behalf of the Petitioner that he has been wrongly convicted, since there is no allegation to the effect that it was he who had appeared in the TV Advertisement on the basis of which, the complainant was allured to go to the Tantrik for removal of his sorrows, nor the money or ornaments were delivered to him by the complainant. On the other hand, the submission in this regard is that the actual culprit/Tantrik namely Nazir Ahmad had died in the meantime while his accomplice Ikbāl Khan could not be apprehended and was declared a Proclaimed Offender, and as such, being the only person apprehended in the present case, he has been made a Scapegoat, since even though the allegation in the FIR was that the alleged threatening Telephone call to kill him which was received by him on his Mobile Phone, was purportedly made by the present Petitioner namely Abdul Khan, still the Ld. Trial Court had found no material to convict him of the relevant offence under Section 506 of the IPC for which, he had been charged. Likewise therefore, he is also liable to be exonerated of the offence of cheating for the reasons already narrated.

6. This Court has carefully gone through the available material in the LCR, and is of the considered opinion that the contentions raised on behalf of the Petitioner seeking to challenge his conviction altogether are not convincing. This is so because although admittedly he was not the

person/Tantrik appearing in the TV Advertisement on the basis of which, the complainant was allegedly allured to visit the Tantrik and delivered his money and valuables, and had also admittedly not received the same directly from him, still the fact as deposed by the complainant is that when he visited the Tantrik Nazir Ahmad for the second time, the Petitioner was one among his other two associates present there, and was sitting at the door of the Hotel's room. In the circumstances and in view of the fact that subsequently, one bracelet and Ear Tops, which were a part of ornaments delivered by the complainant to Nazir Ahmad, were recovered at the instance of the Petitioner, would clearly go to show that he was certainly one of the conspirators.

7. Be that as it may, this Court does find some material in the other submission that the sentence of RI for three years which has been awarded to the Petitioner, appears to be somewhat harsh in the overall facts & circumstances. This is so because as already clear from the narration of facts put on record, the Petitioner neither had any direct interaction nor dealing with the complainant on account of which, there was no overt act on his part of inducement or taking delivery of money and gold ornaments from the complainant directly. The entire role in this regard according to the complainant was performed by the concerned Tantrik Nazir Ahmad, and involvement of the Petitioner as a full fledged conspirator cannot be automatically inferred merely because some part of golden ornaments delivered to Nazir Ahmad were subsequently recovered at his instance. Furthermore, an amount of Rs.7,300/- which is almost half of the money delivered to Nazir Ahmad by the complainant, was also returned by the Petitioner himself apart from Jewellery items recovered at his instance, as

already mentioned above. These in view of this Court are the mitigating circumstances to consider some reduction in the sentence awarded to the Petitioner.

8. Consequently, the Revisional Application is disposed off with the direction that while conviction of the Petitioner for the offence under Sections 420/34 IPC remains sustained, yet the sentence awarded to him shall be reduced to RI for two years instead of three years, although the quantum of fine imposed on him is maintained.

19.03.2018
AS

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No