

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

CRR-4035-2017 (O&M)
Date of Decision: 12.01.2018

Kuldeep Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CRR-4082-2017 (O&M)

Neelam Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HONBLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Paramjit Batta, Advocate,
for the petitioners.

Mr.Luvinder Sofat, AAG, Punjab.

SUDIP AHLUWALIA J. (ORAL)

[1]. This order shall dispose off CRR-4035-2017 & CRR-4082-2017 as both the criminal revision petitions assail the order dated 06.10.2017. For the sake of facts, CRR-4035-2017 is treated as the lead case.

[2]. This revisional application is directed against the judgment passed by the Ld. Additional Sessions Judge, Fatehgarh Sahib in Criminal Appeal No.11 of 2014 dated 06.10.2017. The Ld. Appellate Court was pleased to uphold the judgment of conviction of the petitioners in the trial arising out of FIR No.131 dated 22.07.2006, under Sections 420, 506 & 120-B of the IPC of the Police Station Sirhind, District Fatehgarh Sahib.

Both the petitioners, who are spouses of each other were found guilty of the offences under Sections 420 and 120-B of the IPC and awarded rigorous imprisonment for two years and one year respectively apart from fines.

[3]. The charges against them were that in between 20.09.2005 to 17.12.2005, they allegedly obtained huge amounts of money from Lakhwinder Singh, Harjit Singh and Bhupinder Singh in order to send them abroad. The total amount allegedly received by them was to the tune of ₹18,25,000/-, and, in active connivance with absconding accused Tilak Raj, they did not fulfill the commitment to send the aforesaid persons to Italy, and on their demands for refund of the money, allegedly threatened them with death. Heard Ld. Counsel for the petitioners extensively.

[4]. Ld. Counsel for the petitioners has argued that both the judgment of conviction and that of the Appellate Court upholding the same are perverse and inconsistent with the evidence on record. It has been specially highlighted that conduct of the victims who also deposed as prosecution witnesses was visibly imprudent inasmuch as they allegedly gave huge amounts of money (@ ₹75,000/-+₹5,50,000/-= ₹6,25,000/- each), to petitioner Neelam Sharma without even verifying whether she was actually licensed to be engaged in the business of being a Travel Agent or Immigration/Emigration for the purpose of sending people abroad on a permanent basis. It has also been highlighted that some of the incidents narrated in the prosecution witnesses testimonies are also highly improbable inasmuch as the aforesaid lady petitioner allegedly reached the aggrieved meeting point in Gurudwara Sahib, Fatehgarh Sahib in the wintery month of December, 2005 after having ridden a two wheeler ostensibly all the way from Chandigarh where she was stated to be otherwise residing. It has also

been highlighted that the prosecution side has been unable to show from any cogent evidence the source of money allegedly passed on by the victims to the petitioners.

[5]. This Court has carefully gone through the available evidence. Undoubtedly, there are some discrepancies in the same. But those are minor in nature. Suffice to say the basic story of having offered to the victims/their family members to send them to Italy is found to be consistent as a whole in the evidence coming forth from the prosecution side. Furthermore, from the deposition of an unconnected witness, namely, Harpreet Kaur, it is ascertained that even her mother had been similarly offered to send her daughter i.e. the witness herself abroad to Australia for which even her original passport had been handed over to the petitioner Neelam Sharma. From Exhibit P-12/A, to some extent the fund sourcing as narrated by father of the victim Lakhwinder Singh is also explained. This Court is, however, not much impressed by the argument of deficiency of cogent evidence to prove payment of the huge monetary amounts as claimed by the prosecution. Even assuming such huge payments were not paid, the basic allegations of acceptance of consideration money for the purpose of sending the victims to Italy would nevertheless remain unaltered even allowing for the probability that the alleged consideration money figures might have been motivatedly inflated by the victims/complainant's side.

[6]. What is conspicuously missing from the entire evidence, particularly the cross-examination of the prosecution witnesses, however, is an absolute absence of any tangible motive which might have induced so many of the witnesses to frame the petitioners falsely without any reason. In this connection, it may be mentioned that both the petitioners were

specifically asked by the Ld. Trial Court during their respective examinations under Section 313 Cr.P.C., “Why this case is against you? There identical answer was, “The case is false one. I am innocent”. It has thereafter not been spelt out even by the petitioners as to what could have been the reasons behind their being so elaborately and meticulously framed by so many persons to depose against them.

[7]. It is a well-settled and a recognized maxim of criminal jurisprudence that no person is falsely implicated except in the event of any previous enmity/grudge borne by the complainant or the interested person. In the absence of any indication whatsoever from the material on record as to what might have been the reason for the complainant and the prosecution witnesses to have so elaborately deposed against the petitioners and that too, on false allegations, this Court as a whole finds no such absurdity or perversity in the judgment of both the Ld. Courts below as to overturn the same.

[8]. However, there is one aspect which probably as escaped notice of both the Ld. Courts below. That happens to be the fact that there is hardly any evidence coming forth from any of the witnesses regarding the actual active involvement of the petitioner Kuldeep Sharma in the entire episode. The only tangible material emerging against him from the evidence is that he had accompanied his wife and the other victims to the Delhi Airport on the faithful day when those victims were supposed to be flown abroad. But there is a little material to indicate that he had been instrumental along with his wife in the matter of alluring or inducing the complainant's side to part with the money actually delivered to petitioner Neelam Sharma. Similarly, his presence along with Neelam Sharma at the Gurudwara Sahib where the

complainant's side had allegedly met and delivered money to her would not also necessarily indicate about his actual culpability on the same lines. It can be well presumed that being husband, he in the normal course might have been accompanying his wife to various spots particularly considering the relevant cold season in the months of December/January.

[9]. In the given circumstances, the sentence of two years awarded to this particular petitioner Kuldeep Sharma would appear to be somewhat harsh.

[10]. Consequently, these revisional applications are disposed off with the observations that while conviction of both the petitioners is sustained and the sentence awarded to petitioner Neelam Sharma is also upheld, in case of her husband Kuldeep Sharma, who is also otherwise stated to be a heart patient and has undergone imprisonment for a period of in excess of eight months, the same is ordered to be reduced to the period already undergone.

12.01.2018

Bhumika

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No