

SR.NO.243

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

**CRR No.51 of 2018(O&M)
Date of decision:20.08.2018**

Kiranvir Singh @ Jimmy

.....Petitioner

versus

State of Punjab

.....Respondent

CRR No.275 of 2018(O&M)

Daljit Singh @ Prince

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

**Present: Mr. R.S.Randhawa, Advocate
for the petitioner.**

Mr. K.S.Aulakh, DAG, Punjab.

Rajbir Sehrawat, J.(Oral)

This Order shall dispose of two Criminal Revision Petitions bearing CRR No.51 of 2018 and CRR No.275 of 2018.

The above said two revision petitions have arisen from a common judgment and order passed by lower Appellate Court while deciding two different appeals, filed by two separate accused, but against the same judgment of conviction and order of sentence passed by the Trial Court. Since both the petitioners herein were tried by the Trial Court through a common trial and were held guilty by the same judgment and also ordered to be sentenced through the same order of sentence, therefore, the

present petitions are being taken up for hearing jointly and are being decided by single order despite the fact that, at the intermittent stage, two different appeals were filed by the two different accused challenging their conviction and sentence.

The facts of this case briefly stated are that complainant Jagir Singh son of Pritam Singh resident of village Partapgarh lodged an FIR No.338 dated 27.07.2009 under Sections 406/420 IPC at Police Station Kotwali, Patiala, alleging therein that he was an agriculturist by profession. His son Mandip Singh was serving as a marketing person in City Finance Company; for procuring business for the finance company. He used to visit various customers for that purpose. In one of his such visits he visited the Eentertainment Group(Chhoti Baradari, Patiala), where Kiranvir Singh @Jimmy, Daljit Singh @Prince and Kulbir Kaur wife of Daljit Singh @Prince met his son and cajoled him why he was doing this lowly paid job. He should go abroad. Thereafter, they told the son of the complainant that the above said persons had already sent several boys to the foreign countries and got provided them the job; and permanently settled them there. They asked the son of the complainant that if he wanted to settle abroad then he could approach them. He showed his willingness to go abroad and told them that, first he will talk to his father i.e. to the complainant. Thereafter, the complainant and his son Mandip Singh went to the office of the abovesaid persons, where they told that they will send him to the America and get him provided job for his permanent settlement in United States. But for this the cost would be Rs.15 lakhs, which they could receive in two installments. They told that in the first instance the complainant would have to pay Rs.5 lakhs and the remaining amount he can pay later on. The

complainant borrowed this amount of Rs.5 lakhs from his relatives and went to the office of the accused, alongwith Jasbir Singh and Bhupinder Singh. In the presence of these witnesses this amount of Rs.5 lakhs was handed over to the accused in the month of May, 2007. After receiving the amount they told the complainant that they will get prepared the passport and other documents of his son and after the visa for his son is arranged; he will have to pay Rs.10 lakh more. Thereafter, the accused informed the complainant that they had arranged visa for his son and that he should pay Rs.10 lakhs to the accused. Hence the complainant got sanctioned a loan of Rs.10 lakhs from State Bank of Patiala, Branch-Agriculture, the Mall, Patiala; against his agricultural land situated in village Dullaba, District Patiala. The above said accused visited the house of the complainant and in the presence of Jasbir Singh and Bhupinder Singh the amount of Rs.10 lakhs was paid to the accused. Thereafter, the accused assured the complainant that his son would be taken to the America in 2/3 days. In the month of November, 2007, the above said persons had taken the son of the complainant to California. However, they were sent back to India due to the documents being incomplete. Since the son of the complainant was not settled in America, as promised by the accused, therefore, the complainant demanded his money back. The accused gave the cheque for return of the amount. However, the cheque was also dishonored. When the complainant again demanded money from the accused they started threatening the complainant. Hence the complainant lodged the above said FIR.

After investigation of the above said FIR, the police filed a challan against the two petitioners. To prove the case against the petitioners, the prosecution examined the complainant as PW-1, the eye

witness Jasbir Singh as PW-2, another eye witness Balwinder Singh as PW-3, Satnam Singh as PW-4, Gurinder Singh as PW-5, son of the petitioner Mandip Singh as PW-6. Other two witnesses were also examined. The statements of the accused/petitioner were recorded under Section 313 Cr.P.C.. However, they denied the charge and pleaded innocence. It was claimed by the petitioners that no such alleged amount was received by them nor they retained any document of the son of the complainant. They never worked as travel agent nor had they ever induced or allured the son of the complainant to visit United States of America. They never procured the visa for the son of the complainant. It was further pleaded that son of the petitioner himself appeared before the USA Embassy and visa was granted to him. He travelled to USA on 15.10.2007 and was deported from California Airport, USA. He had to return to India on 18.10.2007. They also raised objection to the documents Ex.PX, Ex.PY and Ex.PZ saying that these documents are not admissible in evidence. In defence the accused examined three witnesses and thereafter, closed the defence evidence.

After appreciating the evidence of the respective parties, the Trial Court held both the accused guilty and convicted them for offence punishable under Section 420 IPC read with Section 34 IPC. Accordingly the petitioners were sentenced to three years rigorous imprisonment along with fine of Rs.5,000/- each.

Aggrieved against the judgment and order passed by the Trial Court, two petitioners filed separate appeals. However, the lower Appellate Court dismissed the appeals filed by the petitioners vide a common judgment dated 11.12.2017. Challenging this judgment order two separate revision petitions have been filed by the petitioners, as mentioned above and

are being considered jointly.

Learned counsel for the petitioners have submitted that the conviction of the petitioners is not sustainable in law because the guilt against the petitioners have not been proved as per the requirement of law. It is contended by learned counsel for the petitioners that the witnesses examined in the case are interested witnesses. Therefore, their testimony can not be made basis for conviction of the petitioners.

Secondly, it is contended by learned counsel for the petitioners that the case of the complainant is falsified by his own testimony, which has to so many contradictions. The allegation of giving money to the accused for sending the complainant's son abroad are; that his son was to be sent abroad in November, and therefore, the complainant had taken a loan from the State Bank to pay the amount of Rs.10 lakhs to the petitioners. However, the complainant has admitted in cross-examination that the son of the complainant had gone to United States of America on 15.10.2008 and returned on 18.10.2008, whereas, the loan from the bank was availed by the complainant only subsequently in the month of November, 2007. Therefore, the factum that loan was taken for giving the money to the accused; for sending the son of the complainant to abroad; is not proved. Rather this fact goes against the story of the prosecution. Still further it is contended by learned counsel for the petitioners that although the petitioners have been convicted for dishonor of cheque, which was given to the complainant for return of the amount, however, the revision against that conviction is also pending.

Having heard the learned counsel for the petitioners, this Court does not find any substance in the submissions made by him. The

complainant has duly proved his case by examining the witnesses, who were present at the time when the money was handed over to the accused. The Trial Court has rightly recorded that these witnesses were cross-examined at length but nothing could be extracted from them to discredit their testimony. Once the factum of giving money to the accused is proved by the eye witness then; merely because the transaction of loan happens to be subsequent to the date alleged when the money is stated to have been given to the petitioners is totally irrelevant. Learned Courts below have rightly held in this regard that the witness was deposing after 7-8 years, therefore, such kind of minor discrepancy can not discredit the entire case of the prosecution. If the material particulars of offence are otherwise proved on record then some discrepancy even in the version given in the FIR or the complaint is also immaterial. If the evidence of the eye witnesses is found to be worth believing by the Court then mere fact that the witnesses happen to be related to the complainant is no ground to dis-believe that evidence. It is for the Court, which is trained to find out the grain out of the chaff, to filter the testimony of the witness examined before the Court, irrespective of the relation of the witness to the complainant. If on such scrutiny, the Court finds that the witnesses have deposed correctly and has proved the case of the prosecution then that testimony can not be discarded only for the reason that they are related to the complainant.

It has also come on record that when the dispute had arisen between the parties then for re-conciliation of the dispute, the respectables gathered at 'Gurudwara Sahib' and at 'Gurudwara Sahib' the accused had admitted that they had taken the money; and that they would return the same. This is so deposed by PW-3 Balwinder Singh, PW-4 Satnam Singh

and PW-5 Gurinder Singh. Out of these three, last two witnesses are not even alleged to be related to the complainant. These witnesses have proved the fact that the complainant and the accused came to 'Gurudwara Sahib' on 14.12.2008, where accused agreed to return Rs.5 lakhs in cash and a cheque of Rs.10 lakhs. These witnesses also identified the accused present in the Court. Therefore, these independent witnesses have duly corroborated the incident qua the return of the money, besides the eye witness having proved the factum of the complainant giving money to the petitioners.

The accused/petitioners had given a cheque to the complainant for the purpose of return of the amount, which was dishonored subsequently. Therefore, mere a discrepancy which might have cropped in the cross-examination of the complainant can not be taken as sufficient to discard his testimony and the testimony of the other witness. This is particularly so, as recorded by the Courts below, that the complainant was examined before the Court after 7-8 years. The human memory fades with the passage of the time. Therefore, mere inconsistency of dates can not discredit the substantive version of taking money by the accused, which is duly proved on record, as having been even admitted by the petitioners before the independent witnesses. Therefore, the petitioners can not draw any benefit out of such minor discrepancies.

The last argument of learned counsel for the petitioners that the revision petition, arising from the conviction for dishonor of the above said cheque is pending before the Court, therefore, the factum of giving cheque by the petitioners to the complainant can not be utilised against the petitioners in the present revision, is also not sustainable. The issuance of cheque by admitting the receipt of an amount is one aspect and dishonor of

the same and the punishment for such dishonor is altogether different aspect. Out of these aspect only the admission part of the petitioners before independent witnesses is more material for the purpose of the present case. Issuance of cheque for that admitted amount is only a supportive or corroborating aspect.

Prosecution under Section 138 of Negotiable Instruments Act is only for the factum of dishonor of the cheque. However, the dishonor of the cheque is a subsequent stage, after the offences involved in the present case had already been committed. Therefore, the result of the trial under Section 138 of the Negotiable Instruments Act would not have direct bearing on the result of the present case. In any case, as of today, the petitioners stand convicted even for the offence under Section 138 of the Negotiable Instruments Act.

No other argument was raised by learned Counsel for the petitioners.

In view of the above, this Court does not find any illegality or infirmity in the Orders passed by the Courts Below.

Finding no merits in the present case, the present revision petitions are dismissed.

20th August, 2018
Shivani Kaushik

[Rajbir Sehrawat]
Judge

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*