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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1087-MA-2014 [O&M]

Date of Decision : July 16 , 2019

Parshotam Lal

.... Petitioner

Versus

Sewa Ram

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Amit Dhawan, Advocate,
for the petitioner.

Ms. Sukhpreet Kaur, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present petition under Section 378(4) of the Code of Criminal Procedure is directed against the order dated 20.02.2013 passed by learned Judicial Magistrate Ist Class, Jalandhar whereby accused has been acquitted of the charge in a complaint filed by the petitioner-complainant, titled **Parshotam Lal Vs. Sewa Ram and others** under Sections 406 and 420 IPC.

2. Facts relevant for the purpose of decision of the present petition; that complainant, Parshotam Lal filed a complaint under Sections 406 and 420 IPC against Sewa Ram, Binder Singh and Jarnail Singh on 12.08.2006. Allegations against the accused persons were that they were engaged in the business of sending the persons abroad in an illegal manner and visa for employment. All the accused persons induced the

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complainant to make payment of Rs.2.00 Lakhs for sending his son, Gagandeep to Australia and demanded Rs.1.00 lakh for completing the formalities of visa and to pay remaining amount of Rs.1.00 lakh when Gagandeep reaches Australia. Similarly, all the accused induced Harbhajan Lal to pay Rs.2.00 Lakhs for completing the formalities of visa and balance amount of Rs.1.00 lakh on reaching brother-in-law of the Harbhajan Lal to Australia. Complainant and Harbhajan Lal believing the accused in good faith made payment of Rs.1.00 lkh each alongwith the passport of son of the complainant as well as brother-in-law of Harbhajan Lal in February, 1996 to all the accused persons in village Bulandpur in the house of the complainant in the presence of Surinder Jassal of village Basesar and Ravi Jassal of village Tajpur. Later on, the accused persons neither send the son of the complainant and brother-in-law of Harbhajan Lal to Australia nor returned the passports and money having been taken for the purpose and the matter was reported to the Panchyat of village Bal where the accused admitted having received the payment and passport, but to no effect. Thereafter, the matter was reported to the police and FIR No. 399 dated 29.9.2005 under Sections 420 and 406 IPC was registered at Police Station Sadar, Jalandhar against all the accused persons.

3. During the pendency of the complaint proceedings, the complainant himself appeared as CW-1 and reiterated the allegations levelled in the complaint apart from examining Harbhajan Lal as CW-2, Surinder Jassal as CW-3, Ravi Jassal as CW-4 and Gagandeep as CW-5.

4. Learned Magistrate, after considering the entire matter in

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controversy, dismissed the complaint mainly on the ground that the complaint was moved in the year 2005, whereas the alleged payment was made in the year 1995 and there was absolutely no explanation for the unreasonable and inordinate of 10 years. While appearing as CW-1, Parshotam Lal deposed that the payment was made in the year 1996 and he was not even aware of the date, when the complaint was made to the Police for the first time. Police started investigation and found the version, on the basis of which FIR was registered, to be false and cancellation report was submitted to the Court and the same was accepted by the Court. The proceedings under Section 182 Cr.P.C. were initiated against the complainant and his father, Harbhajan Lal and as a counter-blast of the same, the present complaint was filed. As per learned trial Judge, the complainant and the witnesses had made contradictory statements and the same were disbelieved on account of inordinate delay and the matter being a counter-blast to 182 Cr.P.C. proceedings, and the complaint was dismissed.

5. Learned counsel for the applicant contended that learned Magistrate has dismissed the complaint without any reason though the complainant had put his version in the written complaint, which was supported by two witnesses and the complaint has been dismissed merely on account of delay.

6. Learned counsel for the respondent contended that learned Magistrate has rightly considered all the facts including the inordinate delay of 10 years in filing the complaint and the fact that the FIR was cancelled and proceedings under Section 182 Cr.P.C. having been initiated against

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the present petitioner.

7. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that there is absolutely no explanation for approaching the Court after and inordinate and unexplained delay of 10 years. More so, the same matter was investigated by the Police and cancellation report was submitted. Subsequently, proceedings under Section 182 Cr.P.C. were initiated against the complainant and thereafter, the present complaint was filed. If the son of the complainant and brother-in-law of Harbhajan Lal were not sent to Australia in the year 1995/1996, there was no reason for the complainant not to report the matter to the police immediately or to file complaint before the Area Magistrate. It apparently speaks out that the complainant version is not believe-worthy and has rightly been disbelieved by the Court below and there is no merit in the present application seeking leave to appeal.

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8. Alongwith the present application for leave to appeal, the present application has been filed for condonation of delay of 448 days in seeking leave to appeal, which has been duly responded by learned counsel for the respondent.

9. Having heard the submissions made by both the parties on the application for condonation of delay, this Court is of the considered view that there is no explanation for the inordinate and unexplained delay of 448 days in filing the application seeking leave to appeal and there is no merit in the present application.

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10. Resultantly, both, applications seeking condonation of delay and leave to appeal stand dismissed in the above terms.

(SHEKHER DHAWAN)
JUDGE

July 16, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes