

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 266 of 2002 (O&M)
Date of Decision: 11.1.2019

Diwan Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Fariad Singh Virk, Advocate
for petitioner No. 2.

Mr. H.S.Sullar, DAG, Punjab.

HARNARESH SINGH GILL, J

The petitioner along with Diwan Singh filed the present revision against the judgment dated 22.8.2001 vide which petitioner and Diwan Singh were convicted and sentenced under Section 420/506 IPC. Against the judgment dated 22.8.2001, Petitioner and Diwan Singh preferred an appeal which was dismissed, vide judgment dated 2.2.2002.

At the outset, learned counsel for the petitioner has not challenged the conviction of the petitioner and has confined his prayer to the extent that the present petition be considered on the quantum of sentence and he be released on probation of good conduction.

The brief facts of the present case are that complainant Harmel Singh moved an application before Senior Superintendent of Police, Rupnagar for registration of a case against Diwan Singh and Pal Singh on

the ground that both the accused are travel agents and have charged Rs. 60,000/- to send Harmel Singh abroad. As per the complainant, the agents/accused have neither sent him abroad nor returned his money.

Accordingly, FIR No. 65 dated 8.8.1997 was registered under Sections 420/506 IPC at Police Station Morinda, District Rupnagar.

To prove the case, the prosecution examined complainant Harmel Singh as PW-1 and a commission agent Rameshwar Nath as PW-4. The investigating officer ASI Kehar Singh appeared as PW-5.

It was stated before the trial Court that it was accused Pal Singh and Diwan Singh approached the complainant at his house and informed that they are sending many people abroad and they are earning handsomely. Thus, Harmel Singh, complainant was lured by accused.

As per the defence counsel, there was no proof of accepting the amount from the complainant. There was no proof that the complainant was kept in Delhi for 15-20 days. Moreover, there was delay in registration of FIR and it being merely a civil liability, has been given the shape of criminal case.

After considering the evidence and hearing the parties, the trial Court vide judgment dated 22.8.2001 held that the petitioner and Diwan Singh (since deceased) are guilty of the commission of offence under Sections 420/506 IPC. Vide separate order of the even date, passed by the trial Court, the petitioner and his co-accused were sentenced to undergo rigorous imprisonment for two years each and to pay fine of Rs. 2,000/- each under Section 420 IPC, in default of payment of fine, the accused were to undergo rigorous imprisonment of six months. Petitioner and Diwan Singh were also sentenced to undergo rigorous imprisonment of six months

each under Section 506 IPC. Both the substantive sentences were ordered to run concurrently.

Aggrieved of the judgment dated 22.8.2001 passed by the Additional Chief Judicial Magistrate, Rupnagar, the petitioner and Diwan Singh preferred an appeal which was dismissed by the Additional Sessions Judge, Rupnagar vide judgment dated 2.2.2002. The Additional Sessions Judge, Rupnagar upheld the conviction of the petitioner and Diwan Singh under Sections 420 and 506 IPC.

It is in these circumstances the petitioner and Diwan Singh have approached this Court and file the present revision.

During the pendency of the present petition, Diwan Singh has died.

Learned counsel for the petitioner has contended that the petitioner is old aged person of 65 years and suffering from old aged ailments. It has been further submitted that the petitioner has also undergone 18 months of actual sentence and the petitioner is not involved in any other case. It has further been submitted the petitioner is the sole bread earner of the family and is facing the agony of partial trial from the last 20 years and is a first offender.

Learned counsel for the petitioner has referred to the judgments of this Court passed in ***CRR No. 2331 of 2017 decided on 4.8.2017 titled Narender Singh versus State of Haryana*** and ***S.P. Malhotra versus U.T., Chandigarh 2007(3) RCR (Criminal) 735.***

On the other hand, learned State counsel has not disputed the custody period of the petitioner. It has been argued by the learned State counsel that the trial Court and the Appellate Court have passed the

judgments of conviction after taking into consideration record on the file and lenient view has also been taken with regard to sentence of the petitioner.

On perusal of the judgment of the Courts below, this Court is of the considered view that there is no illegality or perversity in the findings given by both the Courts below regarding conviction of the petitioner. Thus, no interference of this Court is required, as far as both the judgments passed by the Courts below are concerned pending in revisional jurisdiction.

Even otherwise learned counsel for the petitioner has not assailed the judgment passed by the Courts below, rather, he has prayed for the release of the petitioner on probation. Thus, conviction of the petitioner is, therefore, affirmed.

As far as the prayer for release of the petitioner on probation of good conduct is concerned, this Court feels that the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring individual to reform himself, so that there is everlasting peace in the society. This view finds support from the judgment of Hon'ble Supreme Court in the case of ***Karamjit Singh Versus State (Delhi Admn.), 2001(9) SCC 161***, wherein the following observations were made:-

“Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case the Court has to weight the degree of culpability of the accused, its effect on

others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.”

Thus, keeping in view the ratio of law laid down in *S.P. Malhotra’s* case (supra) and in *Karamjit Singh’s* case (supra), as well as the fact that the petitioner is first time offender and facing the agony of trial for the last more than 20 years, it is ordered that the petitioner be released on probation under Section 4 (1) of the Probation of Offenders Act, 1958, for a period of one year on his furnishing personal bonds in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of Chief Judicial Magistrate, Rupnagar with an undertaking that during the period of one year, he shall not commit an offence and shall maintain peace and be of good behaviour. In case the petitioner violates the terms of the bonds, he shall be bound to appear before the Chief Judicial Magistrate, Rupnagar to undergo the remaining sentence.

With the aforesaid modification in the order of sentence, the

present revision petition stands disposed of.

(HARNARESH SINGH GILL)
JUDGE

January 11, 2019
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes