

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Revision No. 202 of 2009 (O&M)
Date of Decision: 17.9.2019

Jasbir Kaur

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. K.S. Sidhu, Advocate and
Mr. Amandeep Singh, Advocates, for the petitioner.

Ms. Bhavna Gupta, Sr. DAG, Punjab.

Mr. Rakesh Chopra, Advocate for the complainant.

HARNARESH SINGH GILL, J.

The petitioner has preferred this petition being aggrieved of the judgment dated 14.1.2009, passed by Additional Sessions Judge, Fatehgarh Sahib, vide which the appeal filed by her, challenging the judgment of conviction and order of sentence dated 12.10.2006, passed by learned Chief Judicial Magistrate, Fatehgarh Sahib in case FIR No. 28 dated 15.3.1998 under Sections 420, 406 IPC, registered at Police Station Bassi Pathanan, was dismissed.

As per the prosecution case, on the application moved by Harbans Singh and Parminder Singh, the FIR in question was registered against Dr. Gurnam Singh and Jasbir Kaur (wife of Dr. Gurnam Singh) as they had received Rs.6.00 lacs sending them America to work at his (petitioner Gurnam Singh's) petrol pumps. But neither they were sent abroad nor their money was returned. Thereafter, the accused had given

an affidavit agreeing to repay the half amount upto 28.6.1997. However, when the complainants went to accused Dr. Gurnam Singh for return of their money, they came to know that he had absconded. It was alleged that the petitioner had refused to repay the amount to them. On the basis of the said application, the FIR in the present case was registered.

Accused Gurnam Singh was declared proclaimed offender on 21.9.1998.

After completion of investigation and necessary formalities, challan was presented against the petitioner.

On 19.12.1998, charges were framed against the petitioner under Sections 420, 406 IPC to which she pleaded not guilty and claimed trial.

During trial, accused Gurnam Singh had surrendered in the Court on 8.6.1999. Accordingly, on 1.3.2000, charge was re-framed against both the accused under Section 420 IPC to which they pleaded not guilty and claimed trial but accused Gurnam Singh again absented from the Court and ultimately he was declared a proclaimed offender on 31.10.2005 and, thus, the case was reverted back to the original position and was to be decided as per original charge framed on 19.12.1998.

In order to prove its case, prosecution had examined as many as nine witnesses.

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

In defence, the petitioner had examined DW-1 Shamsher Singh and also tendered some documents on record.

The trial Court vide judgment and order dated 12.10.2006

convicted the petitioner under Section 406 IPC and sentenced her to undergo RI for two years and to pay a fine of Rs. 3,000/- and, in default of payment of fine, to further undergo RI for two months. However, the petitioner was acquitted of the charge framed against her under Section 420 IPC.

Learned trial Court in para 19 of its judgment held as under:-

“19. Perusal of the above said evidence brought on record by the prosecution shows that accused Gurnam Singh along with his wife Jasbir Kaur accused disclosed to PW-1 Harbans Singh and PW-2 Parminder Singh that he can send them to U.S.A. When this offer was made by said Gurnam Singh, his wife accused Jasbir Kaur was also present there. Thereupon PW-1 Harbans Singh and PW-2 Parminder Singh paid Rs. 3 lacs each to both the accused. But the accused failed to send them to USA and also to return the said amount of Rs. 6 lacs. To arrange this money loan was borrowed by PW-1 Harbans Singh and PW-2 Parminder Singh from PW-8 Balwant Singh and PW-9 Charanjit Singh respectively vide pronote and receipts and some amount were withdrawn by PW-1 Harbans Singh from State Bank of Patiala, branch Khamanon regarding which statement has been made by PW-7 Jagjit Singh. When Harbans Singh and PW-2 Parminder Singh pressurized the accused to return their money or to send them to USA, then an affidavit dated 17.6.1996 Ex. PW3/A was executed by accused Gurnam Singh while undertaking to return the said amount by way of two installments. This affidavit was proved by PW-3 Bhupinder Singh an attesting witness thereof. However, accused failed to return the same. Regarding this liability, civil suit filed by PW-1 Harbans Singh and PW-2 Parminder Singh was decreed against the accused on 27.1.2005 vide judgment Ex. PX and decree sheet Ex. PY. But against said judgment and decree, an appeal filed by the accused is pending in the Hon'ble High Court, as is evident from copy of order Ex.DY. This above discussed evidence prove that actually accused Jasbir Kaur along with her husband Dr. Gurnam Singh (Since P.O.) was entrusted with amount of Rs. 6 lacs by PW-1 Harbans Singh and PW-2 Parminder Singh for sending them to America. But the accused committed criminal breach of trust with respect to this amount. So far as offence under Section 420 of IPC is concerned, the same cannot coexist along with offence under Section 406 of IPC. Even otherwise

above discussed prosecution evidence does not prove that at the time when accused made offer to the complainants to send them abroad, they had any dishonest intention to induce them to deliver the said amount to them. Hence, accused cannot be held guilty for offence under Section 420 of IPC.”

The appeal preferred by the petitioner was dismissed by the Appellate Court vide judgment dated 12.10.2006. Hence, the present revision petition.

The settlement/agreement dated 22.8.2019 executed at Mediation and Conciliation Centre of this Court, with sincere efforts of Dr. Deepak Jindal, Mediator, is taken on record as Mark 'A'.

Power of attorney, tendered by Mr. Rakesh Chopra, Advocate on behalf of complainants Harbans Singh and Parminder Singh, is taken on record as Mark 'B'.

In the present case, the petitioner and her co-accused Dr. Gurnam Singh (since deceased) had taken Rs. 6 lacs from the complainants on the pretext of sending them to America. Later, Dr. Gurnam Singh had given an affidavit to return the amount by 28.6.1997 because the petitioner and Dr. Gurnam Singh were unable to send them abroad. The complainants came to know that the petitioner had issued a cheque for an amount of Rs. 3,80,000/- in favour of one Ajit Singh, Sarpanch of village Rasulpur who was also cheated by the petitioner and her husband-Dr. Gurnam Singh, who was declared proclaimed offender by the trial Court.

During the pendency of revision petition, the matter was referred to the Mediation and Conciliation Centre of this Court where the matter has been settled between the parties with the sincere efforts of Dr. Deepak Jindal, Mediator, vide settlement/agreement dated 20.8.2019.

I have gone through the settlement/agreement dated 20.8.2019. Petitioner Jasbir Kaur and her Advocate on one side and complainants Harbans Singh, Parminder Singh and their Advocate on the other side, have signed the settlement.

Learned counsel for the petitioner has argued that the petitioner is a lady and has been facing the agony of protracted trial for more than 20 years and she has already undergone 02 months and 21 days out of the total sentence of two years imposed upon her. It is further contended that the findings recorded by the Courts below are based on misreading of evidence. Alternatively, it is prayed that on the basis of the settlement arrived at between the parties, the findings recorded by the Courts below may be set aside and the petitioner may be acquitted of the charge framed against her.

Per contra, the learned State counsel, while defending the judgments and order passed by the Courts below, contends that the findings recorded by the Courts below are based on cogent and convincing evidence and no ground for interference is made out.

However, learned counsel appearing for the complainants does not dispute the factum of compromise.

The people, who intend to go abroad in search of greener pastures, generally fall in such like traps. Thus, I do not agree with the contentions raised by the learned counsel for the petitioner that the findings recorded by the Courts below are based on misreading of evidence. Hence, the well reasoned judgments and order passed by the Courts below, do not call for any interference and the same are accordingly affirmed.

However, keeping in view the fact that the petitioner has been facing the agony of trial for the last more than 20 years and has already undergone more than two months of actual sentence out of the substantive sentence of two years, in my opinion, ends of justice would be suitably met, if the sentence awarded to the petitioner is reduced to the period already undergone by her.

Accordingly, the conviction of the petitioner under Section 406 IPC is maintained. However, sentence qua imprisonment of the petitioner, is reduced to the period already undergone by her.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

September 17, 2019
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No