

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

CRR-2523-2009 (O&M)
Date of decision : 17.09.2019

Sukhdev Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Deepak Sabherwal, Advocate for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J.

The present revision petition has been filed assailing the judgment passed by the learned Judicial Magistrate, affirmed in appeal, convicting the petitioner herein under Section 420 of the Indian Penal Code and Section 24 of Emigration Act, 1983 and sentencing him to rigorous imprisonment for a period of 2 years with a fine of ₹2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 1 month.

This Court has heard learned counsel for the parties and with their able assistance gone through the judgments passed by the Courts below and the record.

As per the case of the prosecution, petitioner had cheated the first informant of ₹4,70,000/- on the pretext of sending him to Italy. It has been alleged that in the year 1999, ₹1,50,000/- was paid to the accused-

petitioner and thereafter further paid ₹1,20,000/- and again paid ₹2,00,000/- and the first informant was got sent to Azerbaijan and thereafter accused-petitioner had fled away.

First informant came back to India by spending ₹1,00,000/- and when he demanded the amount back, convict refused to pay. It is further case of the prosecution that ₹1,42,000/- was collected by the first informant-victim from his relatives.

Prosecution, in order to establish its case, has examined Kuldip Rai-First informant as PW1, Makhan Singh, father-in-law of brother of first informant as PW2, Amolak Singh, brother of the first informant as PW3, Pawan Kumar, brother-in-law of the first informant as PW4, ASI Satnam Singh as PW5 and SI Ajit Singh as PW6.

Learned counsel for the petitioner has submitted that first of all, there are three different versions given in the case set up by the prosecution. He while drawing attention of the Court to the evidence, has submitted as under:-

“a. In the complaint Ex PA he mentions that the petitioner took a sum of Rs 4.70 lacs from the complainant for sending him to Italy, but instead of sending him to Italy, left him in Azerbaijan and the complainant returned from Azerbaijan after spending an amount of Rs 1 lac.

b. In his statement made to the police which was proved on record as Ex.PB by the prosecution, the first informant/alleged victim has come out with a totally different story to the effect that the he was sent to Azerbaijan where he did not get entry and had to return, then he was sent to Georgia where he stayed for one year and the petitioner demanded more money and his brother Amolak Singh PW-3 paid him

Rs.2.00 Lacs more but he was not sent to Italy.

He further submitted that prosecution has not produced any document to prove that there was any agreement of sending the first informant to Italy. He further submits that even as per allegations of the first informant, he has been twice sent out of country by the convict once to Azerbaijan and thereafter to Georgia. In Georgia, first informant stayed there for more than 10 months. He further submitted that prosecution has failed to prove its case as the passport of the first informant has not been proved.

On the other hand, learned counsel for the State, has submitted that in exercise of revisional jurisdiction, this Court should not interfere as the counsel has failed to point out any perversity or material error in the procedure followed.

No doubt, the jurisdiction of the Court while hearing the revision is limited, however, at the same time, the convict has been provided a right to file a revision against judgment of conviction affirmed in appeal. Hence, the revisional jurisdiction cannot be said to be mere a formality. It has been laid down by Hon'ble the Supreme Court in various judgments that while exercising revisional jurisdiction, the Court, after coming to conclusion that the judgments passed by the Courts below are suffering from material irregularity and perversity, is entitled to interfere.

This Court is not repeating what has been contended by learned counsel for the petitioner as noticed above. It is undisputed that all the witnesses who have been examined by the prosecution are interested witnesses being family member of the first informant. The passport of the

first informant has not been proved. The first informant had been making improvements and there are material contradictions in the stand taken by the first informant at various stages. In the complaint Ex.PA, he claims that he had paid ₹4,70,000/- for sending him to Italy but he was sent to Azerbaijan and first informant returned from Azerbaijan after spending an amount of ₹1,00,000/-. However, when his statement was recorded by the police Ex.PB, he stated that he was sent to Azerbaijan where he did not get entry and consequently had to return. Thereafter, further payment was made and he was got sent to Georgia where he stayed for more than 10 months. During this period, another sum of ₹2,00,000/- was paid. It is also admitted by the first informant that there is no agreement that the petitioner had agreed to sent the first informant to Italy. When first informant appeared in evidence, he admitted that he could not find work in Georgia. He also goes on to say that he spent two months happily in Georgia. Still further, in evidence, first informant has stated that he had met the petitioner at an STD booth where he used to go for making telephone calls to different persons showing his intention to go abroad. However, first informant neither disclose the exact location or address of the aforesaid STD booth nor he examine anyone from the STD booth. He further goes on to say that he did not find work in Azerbaijan.

Keeping in view the aforesaid facts, this Court is of the opinion that the judgments passed by the Courts below are suffering from material irregularity, illegality and perversity. Prosecution is required to prove its case beyond shadow of reasonable doubt. In the present case, there are more than one doubt in the case set up by the prosecution and the evidence led in

support thereof. Hence, the revision is accepted. The judgments passed by the Judicial Magistrate, affirmed by the Court of Sessions are set aside. Petitioner is given benefit of doubt. Hence, acquitted.

In view of the above, the present revision petition is allowed.

17.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No