

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3355-2009

Date of Decision: 24.7.2019

Kharak Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Simsi Dhir, Advocate, for the petitioner.

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

Harnaresh Singh Gill, J.

Challenge in the present petition is to the judgment dated 10.12.2009 passed by the learned Additional Sessions Judge, Hoshiarpur, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction and order of sentence dated 15.1.2005 passed by the learned Judicial Magistrate, 1st Class, Dasuya, has been upheld.

The petitioner was tried for committing the offence under Section 420 IPC. As per the prosecution, complainant Bhagwan Singh wanted to visit Dubai and for that purpose, he had contacted accused Kharak Singh, who was working as a travelling agent. Accused-Kharak Singh told the complainant that he could send him to America and the expenditure for this purpose would be Rs.3,00,000/-. The complainant had arranged the said amount. On 25.12.1998 Kharak Singh came to his house and in the presence of Waryam Singh son of Sher Singh,

his mother Sumitar Kaur and father Amar Singh, he gave the said amount to accused-Kharak Singh. However, accused Kharak Singh did not send the petitioner abroad nor did he return the money of the complainant and that in this way, the accused-petitioner had cheated the complainant. On the basis of said statement of the complainant, FIR in this case was registered under Sections 406/420 IPC at Police Station P.S. Mukerian.

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

Charge was framed against the petitioner under Sections 420 IPC to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined as many as 7 witnesses.

In the statement recorded under Section 313 Cr.P.C., the petitioner-accused denied the charges and pleaded false implication. In defence, he had examined six witnesses.

On the basis of the evidence led, it stood proved before the learned trial Court that accused-petitioner Kharak Singh had cheated the complainant of Rs.3,00,000/-, which amount along with passport was taken from the complainant by the accused on the promise of sending him abroad and that said amount and the passport were never returned to the complainant by the accused. Consequently, vide judgment dated 15.1.2005 passed by the learned Judicial Magistrate, Ist Class,

the petitioner was convicted under Section 420 IPC and sentenced to undergo RI for one year and to pay a fine of Rs.1000/- and, in default of payment of fine, to further undergo simple imprisonment for a period of 10 days.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Hoshiarpur. However, vide judgment dated 10.12.2009 passed by the learned Additional Sessions Judge, Hoshiarpur, the appeal was dismissed, thereby affirming the judgment and order passed by the learned trial Court.

Still aggrieved, the petitioner has preferred the present revision petition.

Learned counsel appearing for the petitioner has submitted that both the Courts below have misread and misinterpreted the evidence on record inasmuch the inconsistencies in the testimonies of the prosecution witnesses, have totally been ignored. While referring to the testimony of PW3-Waryam Singh, it is argued that the amount obtained by selling the land, as alleged by the complainant, was used for the marriages of complainant's son and daughter and that the said money was never given to Kharak Singh. It is further argued that it also proved on record that only the photocopy of the passport of the complainant was handed over to the accused-petitioner, while the original passport was retained by the complainant himself and that no money, as alleged by the

complainant, had ever been given by the complainant to the accused-petitioner.

On the other hand, learned State counsel has, while opposing the arguments raised by the counsel for the petitioner, argued that the findings recorded by the Courts below are based on cogent and convincing evidence. The accused-petitioner could not establish by way of evidence before the Courts below that he did not take any money from the complainant for sending him abroad. Once that fact stood established, no scope remains for interference by this Court in its revisional jurisdiction.

I have heard the learned counsel for the parties and have gone through the records with their able assistance.

On the basis of the oral as also the documentary evidence, the learned trial Court found that the guilt on the part of the accused stood proved. It was further found that on the basis of the testimonies of PW3-Waryam Singh, PW4-Prem Singh, PW5-Satnam Singh and PW7-Rajwinder Singh, it stood proved on record that the complainant had handed over to the accused-petitioner a sum of Rs.3,00,000/- after mortgaging the agricultural land. Such findings were upheld by the learned Appellate Court, when appeals filed by the petitioner, had been dismissed.

In view of the above, I do not find any infirmity or perversity in the findings recorded by the Courts below. Hence,

the conviction of the petitioner under Section 420 IPC is maintained.

However, while coming to the quantum of sentence, as per the custody certificate produced on record, the accused-petitioner has already undergone 6 months and 25 days of actual sentence out of the total substantive sentence of 1 year. The FIR in this case was registered on 29.11.1999. The petitioner has been facing the agony of trial for the last 20 years. Thus, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again to undergo the remaining sentence. Ends of justice would be suitably met if the substantive sentence imposed upon the accused-petitioner is reduced to the one already undergone by him.

In view of the above, while maintaining the conviction of the accused-petitioner under Section 420 IPC, his substantive sentence is reduced to the period already undergone by him. However, the amount of fine shall remain intact.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

24.07.2019
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No