

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.3373-2009 (O&M)

Date of Order:17.09.2019

Gurjit Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S.Chahal, Advocate, for the petitioner
Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab

ANIL KSHETARPAL, J.

By filing this revision, correctness of judgment of conviction under Section 420 IPC and order of sentence, to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- passed by learned Chief Judicial Magistrate, Faridkot, affirmed in the appeal, has been assailed.

As per the case of the prosecution, petitioner-convict had charged Rs.1,47,000/- against agreement of Rs.1,50,000/- for sending son of the first informant abroad(Malaysia) and since petitioner failed therein, therefore, he has cheated first informant. It is the case of the prosecution that son (Balraj Singh) of the first informant-Mohinder Singh was sent to Calcutta in place of Malaysia from where he had to come back. It is further averred that sister of first informant-Mohinder Singh is married to Gurdev Singh, who has a brother Bant Singh. Gurjit Singh convict-petitioner herein is son-in-law of Bant Singh. As per the case of the prosecution, after 4 days of payment of Rs.1,47,000/- petitioner took Balraj Singh to Delhi and got

him boarded on an aeroplane and Balraj Singh alighted at Calcutta in place of Malaysia.

After completion of the investigation, police report was filed and charges were framed. Prosecution, in order to prove its case examined PW1 Mohinder Singh (first informant), PW2 Balraj Singh, son of the first informant, PW3 Nahar Singh, PW4 Mohinder Singh son of Jarnail Singh, PW5 Gurdev Singh, PW6 AS Iqbal Singh. Whereas after the closure of prosecution evidence, Statement of Gurjit Singh under Section 313 Cr.P.C was recorded in which all incriminating evidence and circumstances appearing against him were put to him. The petitioner denied prosecution version and claimed that he is innocent.

Petitioner-accused in defence, examined DW1 Bhagwan Singh, DW2 Harpreet Singh, DW3 Sukhdev Singh, DW4 Jeeta Singh, DW5 Gurdial Singh and closed his defence evidence.

This court has heard learned counsel for the petitioner as well as State and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the petitioner submitted that the entire case of the prosecution is based on oral evidence. He submitted that the case as set up by the prosecution is not proved because neither the ticket of the flight from Delhi to Calcutta nor its boarding pass have been produced. He further submitted that if someone is to be sent out of the country, the fundamental requirement is that the person who intend to go must have a passport and also has a visa for landing in that country. He submitted that neither it is the case of the prosecution that Balraj Singh had any passport nor he ever applied for visa. He, hence, submitted that the judgments

passed by the courts below are perverse.

He further drew attention of the court to the statements of defence witnesses which proves that father of petitioner namely Gurdial Singh had a dispute with Paramjit Singh, who was close to Mukhtiar Singh, SHO and was given beatings at Police Station against which Gurdial Singh had filed a complaint. Consequently this false case was planted against the petitioner by Paramjit Singh and Mukhtiar Singh. However, due to pressure put by them father of the petitioner had to compromise and withdraw the criminal complaint. He further submitted that Gurdev Singh is inimical as he was having a property dispute with the father-in-law of the petitioner. He further submitted that son of the first informant is educated and anyone who boards a flight knows where this flight is going to land. It is not the case of the prosecution that any further flight from Calcutta to Malaysia was booked or tickets purchased.

On the other hand, learned counsel for the State has submitted that while exercising revisional jurisdiction, this court should not interfere in the findings arrived at on appreciation of evidence. He submitted that while exercising revisional jurisdiction, the court has very limited jurisdiction.

This court has considered the submissions and find merit in the submissions of learned counsel for the petitioner.

Prosecution in order to prove that Balkar Singh was sent to Clacuatta was required to produce flight ticket or the boarding pass from Delhi to Calcutta which has not been produced. Still further, no date or time of the flight has been given. So much so, details of mode of transportation of Balraj Singh having come back from Calcutta after 7-8

days, have not been produced.

Further, it is known to everyone that for going abroad, minimum requirement is that a person must be possessed of a passport. In this case, it is not the case of the prosecution that copy of the passport of Balraj Singh was supplied to the petitioner-convict. In absence thereof, the passport should have been in possession of Balkar Singh or his father i.e. Mohinder Singh, first informant, but no passport has been produced. Further, it is strange that within 4 days of the alleged receipt of payment of Rs.1,47,000/-, Balraj Singh was taken to Delhi for flying to Malaysia. There are no allegation that visa for Malaysia was applied and granted or the visa was promised at landing in that country.

Further, it has come in record from the defence evidence that there was dispute between Paramjit Singh and father of the petitioner. It is the case of the petitioner that Mukhtiar Singh, SHO had given him beating in the Police Station against which Gurdial Singh had filed a criminal complaint.

It is well settled that in order to bring home the guilt, the prosecution is required to prove case set up by it beyond shadow of reasonable doubt. The benefit has to go in favour of the accused.

In view of the aforesaid, the judgments of conviction under Challenge are set side. The petitioner is given benefit of doubt and hence acquitted.

The revision petition is allowed.

17th September, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No