

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

Criminal Revision No. 113 of 2011 (O&M)

Reserved on : 9.5.2019

Date of decision : 28.5.2019

Balwinder Kaur

.... Petitioner

versus

State of Punjab

... Respondent

Coram: Hon'ble Mr. Justice Rajiv Sharma

Present Mr. Nand Lal Sammi, Advocate, for the petitioner.

Mr. S. P. S. Tinna, Additional Advocate General, Punjab.

Rajiv Sharma, J.

1. This revision is instituted by the petitioner against the judgment dated 6.1.2011, rendered by learned Additional Sessions Judge, Jalandhar, and 26.3.2009, rendered by learned Judicial Magistrate 1st Class, Jalandhar. She was charged with and tried for the offence punishable under Section 420 IPC. She was convicted thereunder and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹ 1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month by the trial Court.

2. The case of the prosecution in a nutshell is that an application dated 29.9.2003 was moved by Mohinder Singh to the Senior Superintendent of Police, Jalandhar against Fatehjit Singh and his wife Balwinder Kaur. He stated that he knew Fatehjit Singh and his wife Balwinder Kaur personally. They were travel agents. They had sent three

persons to Germany and one to Italy. Both came to his house and assured him to send his son Charanjit Singh to England. They demanded ₹ 4.50 lakhs from him. They agreed to take ₹ 4 lakhs in the first installment and the remaining amount after sending his son to England. After a week Fatehjit Singh and Balwinder Kaur again visited his house at Mithapur. His son Charanjit Singh, Malkiat Singh and Jatinder Singh were also present. He gave the passport and ₹ 4 lakhs to them. They neither sent his son to England nor returned his amount. It is under these circumstances, that a case under Section 420 IPC was registered against both the accused persons. The matter was investigated and challan was filed after completion of all the codal formalities. Accused Fatehjit Singh died during trial.

3. The prosecution examined as many as six witnesses in support of the case. The statement of the petitioner was recorded under Section 313 Cr.P.C. She denied the case of the prosecution. Two witnesses were examined by her in defence. She was convicted and sentenced by the learned trial Court vide judgment dated 26.3.2009, as noticed above. The learned Additional Sessions Judge vide judgment dated 6.1.2011 dismissed her appeal and upheld the conviction, however, sentence awarded by the learned trial Court was reduced to rigorous imprisonment for six months from one year. Hence, the present criminal revision.

4. Learned counsel appearing on behalf of the petitioner vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. I have heard learned counsel for the parties and gone through the judgments and record very carefully.

6. PW1 Mohinder Singh testified that Fatehjit Singh and Balwinder Kaur had come to his house at Mithapur. They demanded ₹ 4.50 lakhs from him for sending his son abroad. He paid a sum of ₹ 80,000/- after withdrawal from the bank to Fatehjit Singh and Balwinder Kaur on 4.4.1997. He also handed over passport to them in the presence of Malkiat Singh and Jatinder Singh. On 27.4.1997, he gave a sum of ₹ 1,10,000/- in the presence of Malkiat Singh and Jatinder Singh. In January, 1997, Fatehjit Singh and Balwinder Kaur again came to his house at Mithapur and told that visa of his son Charanjit Singh is ready and demanded a sum of ₹ 2,10,000/-. He took the said amount from Malkiat Singh and gave the same to the accused in the presence of Malkiat Singh and Jatinder Singh. He also proved his statement, Ex.P1, applications given to the police, Ex.P2, and Ex.P4. In his cross-examination, he deposed that both Fatehjit Singh and Balwinder Kaur came to his house on 4.4.1997 and thereafter on 25.4.1997.

7. PW2 Malkiat Singh has corroborated the statement of complainant Mohinder Singh. In his cross-examination, he deposed that first time Fatehjit Singh came to the house of Mohinder Singh on 4.4.1997 and at that time Jatinder Singh and Balwinder Kaur were also present. Money was given to Fatehjit Singh and his wife Balwinder Kaur. On 24.4.1997, the amount was given by him to the complainant. He had withdrawn the said amount from his account of Oriental Bank.

8. PW3 ASI Tara Chand was the Investigating officer. According to him, on the basis of application, Ex.P2, FIR, Ex.P5, was registered.

9. PW5 HC Surinder Singh has conducted the inquiry of this case.

He proved his report, Ex.PW5/B. He also recorded the statements of PW1 Mohinder Singh and Jatinder Singh. In his cross-examination, he deposed that money was given to Fatehjit Singh and no amount was given to Balwinder Kaur.

10. PW6 Charan Singh, Clerk, Oriental Bank of Commerce, Mithapur, only produced the record of the statement of account of complainant Mohinder Singh, for the year 2006-07. However, he did not produce the record pertaining to the year 1997 when the complainant had allegedly handed over amount to the accused.

11. The case of the prosecution precisely is that Fatehjit Singh and Balwinder Kaur were travel agents. They duped the complainant. The petitioner has examined her daughters DW1 Ranjit Kaur and DW2 Prabhjot Kaur in defence. Both of them deposed that their mother was only household lady. However, the fact of the matter is that PW1 Mohinder Singh and PW2 Malkiat Singh have categorically testified that money was paid to Balwinder Kaur and her husband Fatehjit Singh. The prosecution has proved the case against the accused beyond reasonable doubt.

12. Learned counsel for the petitioner has vehemently argued that taking into consideration the peculiar facts and circumstances of the case, more particularly that the petitioner is a widow lady, a lenient view may be taken.

13. After hearing learned counsel for the parties and considering the judgments of both the Courts, this Court does not find any illegality in the conviction of the petitioner keeping in view the evidence led by the prosecution. The petitioner has gone through the agony and trauma of

facing criminal case for the last more than 15 years.

14. Accordingly, the conviction of the petitioner is upheld.

However, her sentence of imprisonment is reduced to the period already undergone.

15. The petition stands disposed of.

28.5.2019
vs

(Rajiv Sharma)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No