

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-356-2011

Date of Decision: 02.09.2019

Gulzar Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Manish Prabhakar, Advocate, for the petitioner.

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

Harnaresh Singh Gill, J.

Challenge in the present petition is to the judgment and order dated 23.12.2010 passed by the learned Additional Sessions Judge, Amritsar, whereby while setting aside the judgment dated 20.03.2009 passed by the learned Chief Judicial Magistrate, Amritsar, the petitioner was convicted under Section 420 IPC and sentenced to undergo RI for one year and to pay a fine of Rs.25,000/- and, in default of payment of fine, to further undergo RI for six months.

The petitioner was tried for committing the offence under Sections 420 IPC. FIR in this case was lodged by DSP, Vigilance Bureau, Amritsar, alleging therein that a criminal case bearing FIR No.48/97 under Section 13(2) read with Section 7 of the Prevention of Corruption Act, 1988 was registered against one Mohinder Singh, JE, PSEB, Patti; said accused had

demanded a sum of Rs.4000/- as illegal gratification from Gulzar Singh-accused-petitioner for installing a motor electric connection; that on the basis of the complaint made by Gulzar Singh, said Mohinder Singh was caught red handed while accepting the bribe, and later on tried by the Court; that a sum of Rs.25,000/- had been paid as a reward to Gulzar Singh through bank draft by the Government of Punjab; however during the trial, Gulzar Singh turned hostile and while doing so, he had defrauded the Government for having received the said award of Rs.25,000/- and hence, committed the offence under Section 420 IPC.

On the basis of the evidence led and after having heard the rival contentions, the learned trial Court, acquitted the accused-petitioner of the charge framed against him, by recording a finding that the prosecution could not prove on record the factum of Rs.25,000/- having been received by the petitioner as reward money. However, in appeal, the judgment of acquittal was set aside in the appeal by the learned Additional Sessions Judge, Amritsar, recording a finding that once accused-petitioner Gulzar Singh had received the amount of Rs.25,000/- by way of a demand draft and the same having been credited to his bank account, there remained nothing to establish that the petitioner had defrauded the Government by turning hostile in the criminal case registered against Mohinder said Singh. Accordingly, the petitioner, as noticed above, was convicted under Section 420 IPC and sentenced, accordingly.

Aggrieved there-against, the petitioner has preferred the present revision petition.

On 11.2.2011, this Court while issuing notice of motion, had noticed the contention of the counsel for the petitioner regarding there being no challenge to his conviction, but confining the prayer for release on probation, he being the first offender.

Today, while maintaining the said plea, learned counsel appearing for the petitioner has submitted that the petitioner is the first offender; that he has not been involved in any other criminal case and that no useful purpose would be served by sending him behind the bars at this stage, especially when the petitioner has been facing the agony of criminal trial for the last 18 years. Thus, a prayer is made that the petitioner may be extended the benefit of being released on probation. Alternatively, it is submitted that if the prayer for release on probation does not find favour with this Court, then the sentence imposed upon the petitioner may be reduced to the period already undergone by him.

On the other hand, the learned State counsel has, while controverting the aforesaid submissions, argued that the learned Appellate Court has rightly recorded a finding that the cheating and dishonest conduct on the part of the accused-petitioner stood proved, the moment it was established on record that the reward amount of Rs.25,000/- had been credited to his bank account. Thus, a witness (complainant in the present case)

on account of whose conduct, the accused got scot free, does not deserve the benefit of probation.

I have heard learned counsel for the parties and have also gone through the record of the case.

In view of the cogent and convincing finding recorded by the learned Appellate Court, I do not find any merit in the submission of the learned counsel for the petitioner for releasing the petitioner on probation.

However, keeping in view the fact that the petitioner has been facing the agony of protracted trial for the last more than 18 years, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again, to undergo the remaining period of sentence. As per the custody certificate, the petitioner has already undergone 1 month and 19 days of actual sentence out of the substantive sentence of one year imposed upon him. Thus, ends of justice would be suitably met if the sentence imposed upon the petitioner is reduced to the period already undergone by him, but subject to his depositing an amount of Rs.20,000/- over and above the fine imposed by the learned Appellate Court, before the District Legal Services Authority, Amritsar.

In view of the above, while upholding the conviction of the petitioner under Section 420 IPC, the substantive sentence imposed upon the petitioner is reduced to the one already undergone by him, subject to the petitioner's depositing an amount of Rs.20,000/- over and above the fine already imposed by the learned Appellate Court, before the District Legal

Services Authority, Amritsar, within a period of two months from today. Non-compliance with the aforesaid directions, shall amount to an automatic dismissal of the revision petition.

Revision Petition is disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

02.09.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No