

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 2894 of 2016 (O&M)
Date of Decision: 2.4.2019

Mukhtiar Kaur alias Taro

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Harish Goyal, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

The present petition has arisen out of the judgment dated 28.7.2016 passed by Additional Sessions Judge, Mansa vide which the appeal filed by the petitioner, challenging the judgment of conviction and order of sentence dated 26.9.2012, passed by Additional Judicial Magistrate, Mansa in case FIR No. 103 dated 1.11.2006 under Sections 420 and 120-B IPC, registered at Police Station Joga, District Mansa, was partly allowed and the sentence awarded by the trial Court, was modified.

In the present case, complainant Jagtar Singh moved an application against Gurlabh Singh son of Balbir Singh and petitioner Mukhtiar Kaur @ Taro widow of Sukhdev Singh alleging that Mukhtiar Kaur had introduced him to Gurlabh Singh and promised to send him abroad on payment of Rs. 1,95,000/-. On 21.4.2005, Gurlabh Singh came to

the house of Mukhtiar Kaur where the complainant was also called. The

complainant had handed over Rs. 1,70,000/- to Mukhtiar Kaur. Mukhtiar Kaur further handed over the said amount to Gurlabh Singh. The complainant also paid the remaining amount of Rs. 25,000/- to Mukhtiar Kaur, who further gave the same to her relative Gurlabh Singh and promised the complainant to wait for the documents to send him abroad. Thereafter, Gurlabh Singh took the complainant and one Hansjit Singh to Delhi and then to Bombay on the pretext of sending them abroad but they were not sent abroad. This way both Mukhtiar Kaur and Gurlabh Singh had connived with each other and committed fraud with the complainant.

Thereafter, on 13.1.2016, a panchayat was convened and Mukhtiar Kaur along with her son Gurdeep Singh and Gurlabh Singh were called where they had assured the complainant to send him abroad before February, 2006. In this regard, a writing was executed which was signed by Gurlabh Singh, but Mukhtiar Kaur refused to sign or put her thumb impression and instead her son Gurdeep Singh had put his thumb impressions on the writing. Even then, neither the complainant was sent abroad nor the amount was returned.

During the pendency of the case before the trial Court, Gurlabh Singh died on 17.11.2009.

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 she pleaded not guilty and claimed trial.

In order to prove its case, the prosecution had examined seven witnesses.

In the statement recorded under Section 313 Cr.P.C., the

accused denied the prosecution case and pleaded false implication.

No witness was examined by the accused in her defence.

Taking into consideration the evidence on record and the testimonies of the witnesses, the trial Court vide judgement and order dated 26.9.2012 convicted the petitioner under Section 420 IPC and sentenced her to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹ 1500/- and, in default of payment of fine, to further undergo rigorous imprisonment for six months.

Aggrieved of the said judgment and order, Mukhtiar Kaur preferred an appeal before the Additional Sessions Judge, Mansa. Vide judgment dated 28.7.2016, while taking a lenient view, the Appellate Court modified the sentence awarded by the trial Court and the petitioner was sentenced under Section 420 read with Section 34 IPC to undergo rigorous imprisonment for one year and six months and to pay a fine of Rs. 1500/- and in default thereof, to undergo further sentence for a period of one month.

I have heard the learned counsel for the petitioner as well as the learned State counsel and with their able assistance, I have gone through the records of the Courts below.

It has been argued by the counsel for the petitioner that the accused had taken money from Jagtar Singh-complainant, Sandeep Singh and Hansjit Singh for sending them abroad, but in their own statements, they had admitted that the money was initially handed over to Mukhtiar Kaur and in their presence, the same was further handed over to Gurlabh Singh.

Attention of this Court has also been drawn to Ex. P-1 which

was executed in the panchayat. The said document also shows that Gurlabh Singh had taken the responsibility to return the amount, taken by him, to the complainant. The complainant and the other witnesses, who stepped into the witness box as PW-2 and PW-3, had stated that the amount in dispute was handed over to Mukhtiar Kaur alias Taro by them at her residence on 21.4.2005, who had further handed over the same to Gurlabh Singh. Even the balance amount of Rs. 25,000/- was paid to Mukhtiar Kaur at her residence in the presence of Hansjit Singh son of Amar Singh and the said amount was also handed over to Gurlabh Singh by Mukhtiar Kaur. On this pretext, counsel for the petitioner has made out a case that Mukhtiar Kaur is not a beneficiary. The alleged amount was handed over to Gurlabh Singh who as a travel agent. He has further argued that the petitioner is a widowed lady of 65 years of age and out of 1½ years, she has already undergone 02 months and 27 days of actual sentence and including remissions, she has undergone 04 months and 02 days and there is no other case pending or decided against her.

Per contra, learned State counsel has argued that the alleged amount was handed over to Mukhtiar Kaur and the same was further handed over by her to Gurlabh Singh. As per the learned State counsel, it is admitted that Gurlabh Singh is a relative of Mukhtiar Kaur, therefore, both of them had connived with each other and committed fraud with the complainant.

Learned State counsel has further argued that even the writing (Ex. P-1) has been signed by Gurlabh Singh and Gurdeep Singh (son of Mukhtiar Kaur) in the panchayat and vide this writing, responsibility has been taken to return the amount.

In the present case, the petitioner was convicted and sentenced by the trial Court vide judgment and order dated 26.9.2012. The appeal preferred by her was partly allowed by the Sessions Court on 28.7.2016 and as noticed above, the sentenced awarded to her was modified. The petitioner has undergone 02 months and 27 days of actual sentence. She has been facing the agony of trial for the last more than 12 years. The petitioner is a widowed lady of 65 years of age. No other case is pending or decided against her. There is no report of misuse of concession of bail by her.

Taking into consideration the cogent and trustworthy evidence produced by prosecution and well reasoned judgments of the Courts below, the findings recorded by the Courts below convicting and sentencing the petitioner, do not call for any interference and the same are accordingly affirmed.

However, keeping in view the fact that the petitioner is 65 years of age and has already undergone more than two months of actual sentence, I feel that ends of justice would be suitably met, if the sentence awarded to the petitioner is reduced to the period already undergone.

Accordingly, conviction of the petitioner under Section 420 read with Section 34 IPC is maintained. However, sentence qua imprisonment of the petitioner, is reduced to the period already undergone by her. There shall be no modification in the fine.

With the aforesaid order, the revision petition is disposed of.

(HARNARESH SINGH GILL)
JUDGE

April 02, 2019
Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No