

In the High Court of Punjab and Haryana at Chandigarh

(1)

Crl. Revision No. 4284 of 2016

Date of Decision: 4.2.2019

Balbir Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

(2)

Crl. Revision No. 3347 of 2016

Des Raj

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. J.S.Bandohal, Advocate
for the petitioner (in CRR-4284-2016).

None for the petitioner (in CRR-3347-2016).

Mr. Sarabjit Singh Cheema, AAG, Punjab.

HARNARESH SINGH GILL, J.

Vide this order, above mentioned two petitions would be disposed of as these have arisen out of common judgments/order passed by the Courts below.

The petitioners have preferred these petitions being aggrieved of the judgment dated 1.9.2016, passed by Additional Sessions Judge, Patiala, vide which the appeals filed by them challenging the judgment of conviction and order of sentence dated 11.7.2013 passed by Judicial

Magistrate, Samana in case FIR No. 142 dated 24.5.2007 under Sections

120-B, 420, 468, 471 IPC, registered at Police Station Samana, District Patiala, was dismissed.

The brief facts of the present case are that vide letter dated 23.2.2007, District Welfare Officer, Patiala asked Senior Superintendent of Police, Patiala for registration of a case against Mohinder Ram and Balbir Singh as they had received Rs. 30,000/- under the Ashirwad Scheme from the Welfare Department by submitting forged and fabricated documents before the Sub Divisional Magistrate, Samana and also by presenting false affidavits. On the basis of the said letter, FIR in the present case was registered on 24.5.2007 against Mohinder Ram and Balbir Singh. After the arrest of the accused, the matter was investigated. The investigating agency sought the specimen thumb impressions of Mohinder Ram and petitioner-accused Balbir Singh. Accused Mohinder Ram gave his specimen thumb impressions on 27.6.2007, whereas petitioner-accused Balbir Singh refused to give his specimen thumb impressions. Vide application dated 3.3.2008, moved by SHO, P.S. City Samana, discharge of accused Mohinder Ram was sought and, accordingly, he was ordered to be discharged vide order dated 4.3.2008 passed by Sub Divisional Judicial Magistrate, Samana.

Prima facie, offence under Sections 420, 468, 471 IPC was found to be made out against accused-petitioner Balbir Singh and charge was, accordingly, framed against him to which he pleaded not guilty and claimed trial.

When the case was at the stage of prosecution evidence, two applications dated 2.8.2011 and 18.10.2011 under Section 319 Cr.P.C. were moved by the prosecution for summoning Des Raj and Balwinder Kaur as additional accused, which were allowed and accused Des Raj and Balwinder

Kaur were also ordered to be summoned to face the trial.

Charges against all the three accused, namely, Balbir Singh, Des Raj and Balwinder Kaur were framed under Sections 120-B, 420, 468, 471 IPC to which they pleaded no guilty and claimed trial.

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

In the statement recorded under Section 313 Cr.P.C., the accused denied the prosecution case and pleaded false implication.

In defence, accused examined Mohinder Ram as DW-1.

The trial Court vide judgement and order dated 11.7.2013 convicted and sentenced the petitioners as under:-

<i>Under Sections</i>	<i>Sentence awarded</i>
<i>420 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay a fine of Rs. 2000/- each and in default of payment of fine, to further undergo simple imprisonment for one month.</i>
<i>468 IPC</i>	<i>Rigorous imprisonment for a period of three years and to pay a fine of Rs. 2000/- each and in default of payment of fine, to further undergo simple imprisonment for one month.</i>
<i>471 IPC</i>	<i>Rigorous imprisonment for a period of two years and to pay a fine of Rs. 2000/- each and in default of payment of fine, to further undergo simple imprisonment for one month.</i>
<i>120-B IPC</i>	<i>Rigorous imprisonment for a period of two years and to pay a fine of Rs. 2000/- each and in default of payment of fine, to further undergo simple imprisonment for one month.</i>

All the sentences were ordered to run concurrently. However, accused Balwinder Kaur was ordered to be acquitted by the trial Court.

The appeals preferred by the petitioners were dismissed by the Appellate Court vide judgment dated 01.9.2016.

Learned counsel for petitioner Balbir Singh has argued that he had neither received any amount from the Welfare Department nor had he

returned any amount. Learned counsel has drawn the attention of this Court on Ex. PW-5/1 vide which the application dated 15.1.2007 moved by petitioner Des Raj (in CRR-3347-2016) to Tehsil Welfare Officer, Samana for depositing the welfare amount received by him as the marriage of his daughter had been postponed. Vide Ex. PW5/2 dated 15.1.2007, Tehsil Welfare Officer, Samana wrote a letter to the District Welfare Officer, Patiala to the effect that Des Raj had tendered two drafts of Rs. 15,000/- each and, thus, returned the amount which was taken for the marriage of his daughter. Copies of the drafts dated 11.1.2007 were also placed on record.

The next contention raised by the learned counsel for petitioner-Balbir Singh is that petitioner Balbir Singh is not a resident of State of Punjab and, thus, he could not be a part of beneficiary of Ashirwad Scheme. Neither he had tendered any document nor at any stage, petitioner-Des Raj moved an application that Balbir Singh had forged any document.

Learned counsel for petitioner Balbir Singh while arguing for petitioner-Des Raj (in CRR-3347-2016) has submitted that initially Des Raj was declared innocent in the enquiry by District Welfare Officer. Even challan was not presented against petitioner Des Raj and he was later on summoned under Section 319 Cr.P.C. Even otherwise, petitioner-Des Raj has returned the amount and this fact has been admitted by PW-1 Jaswinder Singh, District Welfare Officer.

After raising these contentions, learned counsel for the petitioner prays that present petitions may be allowed.

Per contra, learned counsel for the State has stated that the petitioners had never moved any application to the authorities that they were not the beneficiaries of the Ashirwad Scheme and that they had been falsely

implicated. Moreover, petitioner Balbir Singh had declined to give his thumb impressions during the trial Court proceedings but when later on, petitioner-Balbir Singh moved an application showing his willingness regarding his thumb impressions, the said application was dismissed by the trial Court. Learned counsel for the State has further submitted that depositing of Rs. 30,000/- by way of two drafts dated 11.1.2007 shows the admission on the part of the petitioners that they had connived with each other and committed offences under Sections 420, 468, 471, 120-B IPC. Thus, as per the learned State counsel, both the petitions are liable to be dismissed and conviction and sentence of the petitioners deserve to be upheld.

With the able assistance of the learned counsel for the petitioner and the learned State counsel, I have gone through the record of the Courts below.

The statement of PW-1 Jaswinder Singh, District Welfare Officer indicates that the amount received by the petitioners has since been deposited back with the Welfare Department by way of two demand drafts. As far as petitioner Balbir Singh is concerned, he does not belong to the State of Punjab. Thus, he was not eligible for the benefit of Ashirwad Scheme nor he had moved any application to get any benefit.

Petitioner Des Raj has undergone more than 09 months of actual sentence whereas petitioner Balbir Singh has undergone more than one year of actual sentence. Not going much into the facts of the case and by taking into consideration the totality of the facts and circumstances of the case and the fact that the petitioners have been facing the agony of trial for the last 12 years as the FIR was registered on 24.5.2007 and further the fact

that the amount has already been deposited by petitioner Des Raj, I feel that ends of justice would be met if the sentence awarded to the petitioners is reduced to the period already undergone.

Accordingly, conviction of the petitioners under Sections 420, 468, 471, 120-B IPC is maintained. However, sentence qua imprisonment of the petitioners, is reduced to the period already undergone by them. There shall be no modification in the fine.

With the aforesaid order, both the revision petitions are disposed of.

(HARNARESH SINGH GILL)
JUDGE

February 04, 2019
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes