

..

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-3382-2018 (O&M)
Date of Decision : August 27, 2019

Ashish Petitioner

Versus

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present : Mr. Deepanshu Matya, Advocate
for the petitioner.

Mr. Ashok Muthreja, Deputy Advocate General, Haryana
for the respondent State.

SHEKHER DHAWAN, J.

Present revision petition is directed against the judgment of conviction dated 20.07.2016 and order of sentence dated 21.07.2016 passed by learned Additional Chief Judicial Magistrate, Gurugram vide which the petitioner was convicted and sentenced as under:-

Under Section	Sentence	In default
U/s 170 IPC	to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs. 2.00 Lakhs.	To undergo further Rigorous Imprisonment for a period of six months.
U/s 406 IPC	to undergo Rigorous Imprisonment for a period of Seven Years and to pay a fine of Rs. 1.00 Lakh.	To undergo further Rigorous Imprisonment for a period of six months.
U/s 420 IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.2.00 Lakhs.	To undergo further Rigorous Imprisonment for a period of six months
U/s 506 IPC	to undergo Rigorous Imprisonment for a period of two years.	-

..

All the sentences were ordered to run concurrently.

2. The petitioner preferred an appeal and learned Additional Sessions Judge, Gurugram, while acquitting the petitioner for the offences punishable under Sections 170 and 406 IPC, modified the judgment of conviction and order of sentence and was convicted and sentenced the present petitioner as under:-

Under Section	Sentence	In default
U/s 420 IPC	to undergo Rigorous Imprisonment for a period of Four years and to pay a fine of Rs.1 lakh.	To undergo further Rigorous Imprisonment for a period of six months.
U/s 506 IPC	to undergo Rigorous Imprisonment for a period of two years.	

3. Facts relevant for the purpose of decision of the present revision petition; that on 16.08.2014, a complaint was received from the office of Police Commissioner, Gurugram against petitioner, Ashish and his wife, Simmi regarding cheating and criminal intimidation. Complainant, Ashok Kumar Aggarwal was running a medical store business in the name of 'Shri Shyam Medicos' in Sector 57, Gurugram. Simmi (wife of the present petitioner) used to purchase medicines from him since 2011 and whenever she used to visit the shop, she was being escorted by a gun man and was having a vehicle with Red Beacon on the same and that process continued for 2-3 years. She used to disclose her identity as a wife of the Judge of this Court. On certain dates, petitioner, Ashish also used to visit the shop and intimacy between the present petitioner and the complainant developed.

4. In January, 2013, above named Simmi told the complainant

..

that her husband had plots in various sectors of HUDA at Gurugram for sale and believing the same to be correct, the complainant met the petitioner through Simmi. The petitioner disclosed that he had plots of HUDA in various sectors of Gurugram and he could get a plot allotted to the complainant. Petitioner used to introduce him a Judge of this Court and also showed his photographs with many senior officers. Complainant believed the version of the accused and gave Rs.13 lakhs in cash as advance of a plot to the petitioner in January 2013. In March 2013, when the complainant asked the accused regarding the plot, the petitioner again asked for additional payment of Rs.5 lakhs. Upon this, the complainant made additional payment of Rs.5 lakhs as well. Whenever, the complainant used to ask for the plot, the petitioner always reiterated that he would get the plot allotted.

5. In July 2013, when the complainant asked the petitioner that he was not in a position to purchase the plot and made a request to him to refund the money, the present petitioner issued a cheque bearing No.636021 dated 26.07.2013 for a sum of Rs.13 lakhs and promised to pay balance amount of Rs.5 lakhs in September 2013. At that time, the petitioner requested the complainant not to deposit the said cheque before September. The said cheque was deposited in the bank on 05.09.2013, but the same was dishonoured. Petitioner again asked the complainant to deposit the said cheque after 25.09.2013 and for balance payment of Rs.5 lakhs, he issued another cheque bearing No.042163 dated 30.09.2013 of ICICI Bank. Later on, both these cheques were dishonoured on account of 'Insufficient funds'. On 12.10.2013, the complainant told the petitioner that

..

both the cheques were dishonoured and his money be refunded, otherwise he would initiate legal proceedings. The petitioner asked the complainant that he is a Judge of the High Court at Chandigarh and has connections with police officers and high-ups also and would get him involved in false cases and the complainant would remain in jail. As such, the complainant did not initiate legal proceedings.

6. Later on, through the newspaper, the complainant came to know that the petitioner was not the Judge of this Court and used to cheat people by telling that he is a Judge and Gurugram police had initiated proceedings against him in number of cases. Subsequently, the petitioner was tried and convicted in number of cases of cheating.

7. The complainant lodged a complaint on the basis of which FIR No.233 dated 16.08.2014, under Sections 406 and 506 of IPC was registered at Police Station 55/56, Gurugram.

8. After completion of investigation proceedings, challan was presented before the trial Court.

9. During trial, learned trial Court completed various proceedings of trial including framing of charge, recording statements of prosecution witnesses and examination of the accused (petitioner herein) under Section 313 Cr.P.C. After considering the material and evidence available on record, vide judgment dated 20.07.2016, learned trial Court held the petitioner guilty and convicted and sentenced him under Sections 170, 406, 420 and 506 IPC vide order dated 21.07.2016. However, in appeal, learned first appellate Court vide judgment dated 18.09.2018, acquitted the petitioner for the offences punishable under Sections 170 and 406 IPC

..

and modified the judgment of conviction and order of sentence and reduced sentence to the petitioner under Section 420 IPC from Seven years to Four years and upheld conviction under Section 506 IPC. The present revision petition is challenge to the said judgment dated 18.09.2018 passed by learned Additional Sessions Judge, Gurugram.

10. Learned counsel for the petitioner while arguing on the point of innocence of the petitioner-accused and the proceedings before learned Courts below to be illegal, mainly contended that the allegations levelled against the present petitioner are totally false and self-contradictory. The petitioner has already been acquitted for commission of offence punishable under Section 406 IPC and if he has already been acquitted under Section 406 IPC and it is a case of non-entrustment of any money or property, no offence under Section 420 IPC is made out. On this point, reliance was placed on the judgment from Hon`ble Apex Court in **Prof. R.K.Vijayasathy & Anr. Vs. Sudha Seetharam & Anr., 2019(1) JT 420** and judgment from the Co-ordinate Bench of this Court in **Miss Bina Pratapsinh Vissanji c/o The Wallace Mills Co. Ltd., Bombay and Ors Vs. Sant Lal Rajinder Kumar and anr., 1991 (3) R.C.R. (Criminal) 533.**

11. Learned counsel for the petitioner also contended that initially allegations were against Simmi, wife of the petitioner, but no challan has been presented against her.

12. Learned counsel further contended that if the entire case of the complainant is taken to be correct at the most, it is a case under Section 138 of the Negotiable Instruments Act as allegedly, certain cheques were handed over to the petitioner in some property deal matter

..

and the same were dishonoured, but in any case, no offence under Section 420 or 506 IPC is made about because for offence under Section 420 IPC, the intention of the accused must be deceitful to cheat the victim from the very beginning for gain or loss. The said basic ingredients of the offence of cheating as defined under Section 415 IPC are completely missing in this case. Learned Courts below have not considered this legal aspect and as such the judgment of conviction and order of sentence recorded by learned Courts below are liable to be set-aside.

13. While arguing on this point, learned State counsel contended that the allegations against the petitioner are specific to the point that right from the day one, present petitioner was impersonating himself as a Judge of this Court and persuaded the complainant to deliver cash amounting to Rs.13.00 lakhs initially and again a sum of Rs.5.00 Lakhs and he had no intention to return the same or to get allotted any plot at any stage. It was a clear cut case of cheating on the part of the petitioner and intimidating the complainant and for that offence, learned Courts below have already convicted and sentenced the petitioner for the offence punishable under Sections 420 and 506 IPC.

14. Learned State counsel also contended that the offence of cheating under Section 420 IPC and as defined under Section 415 IPC is quite independent and distinct from the offence under Section 406 IPC and on that account only, learned Additional Sessions Judge vide judgment dated 18.09.2018 had acquitted the accused for the offence punishable under Sections 406 and 170 IPC and convicted him for the offences punishable under Section 420 and 506 IPC only and the present revision

..

petition be dismissed.

15. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the petitioner was being tried for the allegations that he had been impersonating himself as a Judge of this Court on different dates and while doing so, he had persuaded the complainant to hand over a sum of Rs.13.00 Lakh for sale of the plot to the complainant which he never intended to do. Subsequently, he received another sum of Rs. 5.00 Lakhs on that account and again intention was clear to cheat the complainant. Subsequent intention of the petitioner was clear because he had issued cheque Nos.No.636021 dated 26.07.2013 for a sum of Rs.13 Lakhs and No.042163 dated 30.09.2013 for a sum of Rs.5.00 Lakhs, knowing fully well that he had no funds in his bank accounts and same proved to be correct because the said cheques were dishonoured by the bank on account of insufficiency of funds. This fact duly establishes the deceitful intention of the petitioner right from the beginning and wrongful loss to the complainant and wrongful gain to the present petitioner. As such, learned Courts below have rightly convicted the petitioner for the offence punishable under Section 420 IPC. Therefore, the judgments cited by learned counsel for the petitioner are distinguishable from the facts of the present case.

16. Allegations against the petitioner were also for the offence under Section 506 IPC and the same have been proved during the trial before learned Additional Chief Judicial Magistrate and the same were affirmed by learned appellate Court in appeal as the petitioner had been

..

intimidating the complainant through-out to use his connections with the police officers and high-ups and threatened the complainant even not to initiate the legal proceedings against him. There is no ground to interfere in the judgment of conviction recorded by the Courts below.

17. As regards to the order of sentence, learned Additional Chief Judicial Magistrate has observed in its order that the petitioner is a habitual offender and was involved in a number or similar cases against him. The details of such cases is as under :-

1.	State Vs. Ashish	FIR No.21/2015, under Section 506 IPC, P.S. Bhondsi.
2.	State Vs. Ashish	FIR No.85/2016, under Section 42-A of Prisoner Act, P.S. Bhondsi.
3.	State Vs. Ashish	FIR No.264/2014, under Sections 419, 420, 506 IPC, P.S. Sector-18.
4.	State Vs. Ashish	FIR No.228/2014, under Sections 420, 467, 468, 471 IPC, P.S. Sector-56, Gurugram.
5.	State Vs. Ashish	FIR No.43/2015, under Section 420 IPC, P.S. Sushant Lok.
6.	M/s Rajra Jewellers Vs. Ashish	Under Section 138 of N.I. Act, P.S. Sector-56, Gurugram.
7.	State Vs. Ashish	FIR No.227/2014, under Sections 406 and 506 IPC, P.S. Sector-55/56, Gurugram.
8.	State Vs. Ashish	FIR No.225/2014, under Sections 406, 420, 467, 468, 471, 120-B IPC.
9.	State Vs. Ashish	FIR No.240/2014, under Sections 170, 201, 406 and 420 IPC, P.S. Sector-56, Gurugram.
10.	State Vs. Ashish	FIR No.245/2014, under Sections 170, 406, 419 IPC, P.S. Sector 55/56, Gurugram.
11.	State Vs. Ashish	FIR No.247/2014, under Sections 420, 467, 471, 201 IPC, P.S. Sector-56, Gurugram.

18. There is no denial to that and the Courts below have already taken a most lenient view on the point of sentence.

19. In view of the above, the present revision petition is without

..

any merit and the same stands dismissed in the above terms.

(SHEKHER DHAWAN)
JUDGE

August 27, 2019
som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes