

CRR-3589-2018 (O&M)

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

**CRR-3589-2018 (O&M).
Decided on: May 9, 2019.**

Jassa @ Basant and another

.. Petitioners

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

*** * ***

**PRESENT Mr.Rajesh Lamba, Advocate,
 for the petitioners.**

Mr.Manish Bansal, Asstt. A.G. Haryana.

MAHABIR SINGH SINDHU, J. (ORAL)

The present revision petition has been directed against the impugned judgment dated 31.7.2018 passed by learned Additional Sessions Judge, Fatehabad, vide which the appeal filed by the petitioner has been dismissed and the judgment of conviction as well as order of sentence dated 12.6.2015 and 15.6.2015, respectively, under Sections 389 and 120B of the Indian Penal Code, (for short 'IPC') of learned Judicial Magistrate

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First Class, Fatehabad, (for short 'JMIC'), has been affirmed.

Brief facts of the case are that prosecution was initiated on the basis of statement Ex.PW1/A made by Kulwinder Singh, PW1 with the allegations that about 4/5 days ago, he received a missed call on his Mobile No. 9416061100 from a Mobile number whose last digits were 04122, but he did not attend the same. Again after 2/3 days, he received a phone call from the same number and which he duly attended and caller was a female who revealed that earlier she was residing at Fatehabad, but now shifted to Sirsa. She further told that her father is a Truck Driver and asked him to get her marriage solemnized at Fatehabad with some Sikh boy. Upon this, PW1 asked her to come with her parents at Fatehabad. Consequently, on 21.11.2013, PW1 along with his friend Bahadur Singh visited Sirsa for some personal work and again received a call from the same number; upon which complainant along with his friend visited the house of that lady at Sirsa on Rania Road, near Girls High School. They found that a lady aged about 25 years along with a man of 28-30 years of age as well as a boy of 11 years in the house. The lady revealed her name as Soma and after some time, three more male members as well as one female came there and she made a noise that PW1 along with his friend Bahadur Singh have done wrong act with her. Upon this, complainant along with his friend got frightened and out of the accused persons, one Mani Ram, took them inside the room and asked to pay an amount of Rs.10 lacs otherwise, they would go to jail. Finally, the deal was struck at Rs.5 lacs and Mani Ram along

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with one Bhajan Lal accompanied the complainant in his Car which was parked at Bus Stand, Fatehabad and they visited the house of Gurdeep Singh from whom, complainant received Rs.2 lacs after narrating the entire story and handed over the same to above Mani Ram and Bhajan Lal. Complainant PW1 requested the above persons that he would make the remaining payment on next date, but they did not agree and asked him to pay the entire money. Further alleged that one more person, namely, Malkiat also came on the spot and he had a conversation with both Mani Ram and Bhajan Lal and then went away. Complainant along with Gurdeep also returned to their home. On next day, i.e. 22.11.2013, complainant borrowed Rs.1.50 lacs from his cousin brother, namely, Darshan for giving the same to accsued persons. On the same day, he received a telephone call from one Mobile number whose last digits were 33590 with a warning to pay the balance amount of Rs.3 lacs, otherwise, they would implicate him in a rape case. Complainant told the accused persons that he has arranged Rs.1.50 lacs and would make the payment of remaining amount shortly but they insisted him to make the entire payment of Rs.3 lacs. Consequently, FIR No. 665, dated 22.11.2013 under Sections 384, 389, 120-B IPC , Police Station City, Fatehabad, was registered.

After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Court of competent jurisdiction and on the basis thereof, prima facie offences under Sections 384, 389 and 120-B IPC were made out and accordingly, the petitioners were charge-sheeted by the

learned trial Court along with other co-accused but they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined total 9 witnesses and also brought on record the documentary evidence.

The entire incriminating material was put before the petitioner under Section 313 Cr.P.C., wherein they denied the same and claimed innocence while pleading false implication.

After hearing both sides and perusing the record, learned trial Court held the petitioners guilty under Sections 389 and 120-B IPC while sentencing them as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default of Fine</i>
389 IPC	Rigorous Imprisonment for a period of three years and fine of Rs.2,000/-,	To further undergo simple imprisonment for 1 month
120-B IPC	Rigorous Imprisonment for a period of one year and fine of Rs.500/-.	To further undergo simple imprisonment for a period of 7 days

Both the sentences were ordered to run concurrently.

Aggrieved against the judgment and order passed by the learned JMIC, an appeal was preferred by the petitioners, but the same was dismissed by the learned Additional Sessions Judge, Fatehabad, vide judgment dated 21.07.2018, hence the present criminal revision.

At the outset, learned counsel for the petitioners does not wish to challenge the conviction imposed by both the Courts below, but he confined the prayer only regarding the quantum of sentence.

It is contended by learned counsel for the petitioners that FIR in the present case was registered on 22.11.2013, and they were convicted by learned trial Court on 12.06.2015 and thereafter, their appeal was also dismissed and now they are in the criminal revision against both the Courts below. Thus, the petitioners are facing the criminal proceedings for the last about 5½ years and as such they have already suffered a lot. Further contends that petitioners are the first offender as there is no other criminal case pending against them.

On the other hand, learned State counsel has opposed the prayer of the petitioners and submitted that petitioners does not deserve any leniency for reduction of their sentence and the present petition is liable to be dismissed in entirety.

Heard both sides and perused the record.

Custody certificate of the petitioners has been produced in Court by learned State counsel and the same is taken on record.

Perusal of the custody certificate reveals that petitioner Jassa Singh @ Basant has undergone the sentence of 2 years 5 months and 24 days including remissions of 2 months and 1 day out of total sentence of 3 years whereas petitioner Bhajan Lal has undergone the sentence of 2 years 4 months and 5 days including remissions of 2 months and 2 days out of total sentence of 3 years and during their custody they were having a good conduct in the jail premises and that is the reason that they have been granted the benefit of remission also.

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Petitioners have already suffered the agony of protracted litigation w.e.f. 22.11.2013 and being a poor person having the liability to maintain children of tender age, in the opinion of this Court, can be considered as a mitigating circumstance for the reduction of their sentence imposed by both the Courts below.

In view of the above, the conviction of the petitioners imposed by both the Courts below under Sections 389 and 120B IPC is upheld, however, the sentence is reduced to the period already undergone by them. Amount of fine, if not already paid, the same shall be deposited before the learned trial Court within a period of two months from today.

Disposed off in the aforesaid terms.

Pending miscellaneous applications, if any shall also stand disposed off.

May 9, 2019.
raj arora

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No