

CRR-359 of 2018 (O&M)

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

CRR-359 of 2018 (O&M)
Date of Decision: 11.02.2019

Jaswant Rai and another

...Petitioners

Versus

State of Punjab.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Suvir Sidhu, Advocate, for the petitioner.
Mr. Munish Sharma, AAG, Haryana.
Ms. Sheenu Sura, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Custody certificates produced in Court today are taken on record.

Through instant revision, petitioners have laid challenge to judgment dated 09.11.2017 of the First Appellate Court, affirming judgment of conviction and order of sentence dated 30.08.2014 of the trial Court, whereby they have been held guilty under Section 420 read with Section 34 IPC and sentenced to undergo rigorous imprisonment for three years and pay fine of ₹2,000/-. In default of payment of fine to undergo simple imprisonment for three months.

According to the prosecution story, on coming to know about craving of the complainant, petitioners introduced him to deceased Balwant Rai as a travel agent who used to send people abroad and cheated him for ₹9.00 lakh.

CRR-359 of 2018 (O&M)

most of the payment was made by the complainant to co-accused of the petitioners, namely, Balwant Rai, who died during trial. The Court at Jalandhar had no jurisdiction to try and convict the petitioners, because entire transaction, according to the complainant, had taken place at Phagwara. Two material witnesses, namely, Karam Chand father of the complainant and Mukesh Kumar, in whose presence alleged payment was made by the complainant, were not examined by the prosecution for the reasons best known to it. Therefore, in the absence of any independent corroboration to the testimony of the complainant, petitioners could not have been convicted. Both the Courts below have failed to appreciate that there were major contradictions in the statements of material witnesses inasmuch as complainant testified that he never visited Village Nangal Shama, where petitioner No.1 resided, whereas vide recovery memo Ex.PW1/C passport of the complainant was recovered from the house of petitioner No.1 situated at Village Nangal Shama in the presence of complainant. Civil Court findings have been recorded against the complainant that he could not prove payment of alleged amount to the petitioners, which he disclosed in the impugned complaint. Suit of the complainant was decreed only against Balwant Rai (deceased).

On the other hand, learned State counsel, assisted by learned counsel for respondent No.2, refuting above submissions, pleading legality and validity of the judgments of both the Courts below, contended that petitioners are real brothers of deceased Balwant Rai. They in connivance with each other cheated complainant for ₹9.00 lakh on false pretext of sending him abroad. Neither petitioners nor their deceased brother Balwant

CRR-359 of 2018 (O&M)

Rai sent the complainant abroad nor refunded the cheated amount.

Having given thoughtful consideration to the rival submissions, this Court finds the instant revision completely devoid of any merit for the reasons to follow.

No question of law muchless substantial has been raised in this revision.

Both the Courts below have recorded concurrent findings holding petitioners guilty and sentencing them in the manner as narrated above in the opening part of the judgment.

In revision, this Court has very limited power, which can only be exercised, (i) when the Courts below have acted beyond jurisdiction vested in them or (ii) have not exercised the same diligently and (iii) have exercised illegally. After going through the judgments of both the Courts below, this Court does not find any such infirmity, inasmuch as, they are well-reasoned and based on appreciation of evidence. Therefore, the same are not required to be interfered with.

Contention of learned counsel for the petitioners that main accused in the alleged forgery and cheating was real brother of the petitioners, namely, Balwant Rai, who died during trial, has no force in view of the fact that petitioners, if were not in conspiracy with their aforesaid deceased brother, in that eventuality they must have refrained the complainant from making any payment to their fraudulent brother deceased Balwant Rai. Non-advice to the complainant by the petitioners for not making payment to their brother deceased Balwant Rai in itself is sufficient to draw inference against them that they in connivance with their deceased

CRR-359 of 2018 (O&M)

brother Balwant Rai had collectively cheated the complainant.

Non-examination of father of the complainant and Mukesh Kumar is not fatal to the case of the prosecution inasmuch as quality of evidence has to be seen, not the quantity. Despite lengthy cross-examination of the complainant by learned counsel for the petitioners, nothing favourable could be elicited from his mouth. Testimony of the complainant, naming the petitioners as conspirators and cheaters for cheating him for ₹9.00 lakh could not be shaken. The amount was paid by complainant by selling his plot vide sale deed Ex.PW7/A. The petitioners have fraudulently cheated hard-earned money of the complainant, therefore, none of the petitioners is entitled to be given benefit of doubt.

I have gone through impugned judgments of both the Courts below and find no illegality or perversity in the same.

Dismissed.

February 11, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No