

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

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**CRR-1601-2014 (O&M)
Date of decision :24.10.2019**

Geeta Sharma and another

... Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. N.D.Achint, Advocate for the petitioners.

Ms. Palika Monga, DAG, Haryana.

Mr. Deepak Kumar Sharma, Advocate for respondent No.2.

HARNARESH SINGH GILL, J.

The present petition has arisen out of the judgment dated 30.04.2014 and order of sentence dated 08.05.2014 passed by the Additional Sessions Judge, Sirsa, vide which the appeal filed by respondent No.2, challenging the judgment of acquittal dated 07.05.2013, passed by the Judicial Magistrate, Ist Class, Ellenabad in case FIR No.266 dated 11.09.2007 under Sections 420/34 of Indian Penal Code ('IPC' for short), registered at Police Station Ellenabad, was allowed.

Brief facts of the present case are that complainant-respondent No.2, Kamla Sharma got registered the above stated FIR against her sister, Geeta Sharma (petitioner No.1) and her sister's son, Hemant Kumar (petitioner No.2) that they in connivance with one Krishan Sharma took total amount of Rs.2,60,000/- for the employment of her son-in-law, Vijay Kumar who was taken to Delhi on 25.06.2004 where Krishan Kumar took his signatures on some forms for a job in customs department. When no job was arranged,

respondent No.2 (complainant) requested to return the amount and on refusal, a complaint was filed on 28.08.2007 under Section 156(3) Cr.P.C. The then learned Judicial Magistrate Ist Class, Sirsa ordered investigation and FIR was registered.

It will not be out of place to mention here that during the pendency of present revision petition, petitioner no.2 (Hemant Kumar) died on 31.01.2015.

After completion of investigation and necessary formalities, challan was presented against the petitioners.

Charge was framed against the petitioners under Section 420/34 of IPC to which they pleaded not guilty and claimed trial.

Learned Judicial Magistrate Ist Class, Ellenabad vide judgment dated 07.05.2013 after discussing the depositions of respondent No.2 (complainant) Kamla Sharma, (PW2) and Chand Sharma (PW3), husband of PW2 drew the conclusion that it did not reflect that simply by acting on the representation and inducement of petitioners, the complainant parted the alleged amount and even in her cross-examination, it had not come on record that there was any inducement on the part of petitioner No.1, Geeta Sharma and representation and inducement was made by Krishan Sharma who also got signature of Vijay Kumar on some papers to get a job in the customs department. However, it was found that that prosecution had failed to produce any evidence against him nor he was arrayed as an accused and nor it had come on record and as to how the alleged amount of Rs.2,60,000/- was arranged and, accordingly, the petitioners were acquitted.

Thereafter, two appeals were filed against the judgment of acquittal dated 07.05.2013, one by the State and other by respondent No.2,

Kamla Sharma. Learned appellate Court took into consideration the disclosure statement of petitioner No.2 (since deceased) Ex.PW3/A stating that the amount of Rs.1 Lakh, which he took from respondent No.2 (complainant) had been kept by him. But no recovery was effected from petitioner No.2 at any stage.

Before learned appellate Court, the argument raised by the learned counsel for the petitioner was that petitioner No.1 being the real sister of respondent No.2 got settled the marriage of complainant's daughter with Vijay and it was the petitioner, who had spent the whole expenses on said marriage and to grab the amount spent on marriage. The petitioners were falsely involved in the present case.

Regarding non-joining of Krishan Sharma of Delhi as an accused or a witness by prosecution, the learned appellate Court discussed the same in para 23 of the judgment, which is reproduced as under for the ready reference.

23. *It has been submitted that Krishan Sharma was not joined in this case as an accused or as a witness. If Krishan Sharma of Delhi has not been arrayed as an accused or as a witness, then who is at fault, it is the IO who may be at fault for not arraying Krishan Sharma of Delhi either as an accused or as a witness to the transaction but when so many persons are consistently deposing regarding the making of payment of Kamla to Geeta, firstly to Hemant Kumar and Tarun and secondly to Geeta, when she came to Ellenabad and there are two independent witnesses to that effect, then how the prosecution version can be disbelieved.”*

Accordingly, the petitioners were held guilty for the offence punishable under Section 420 read with Section 34 IPC vide judgment dated

30.04.2014 and were sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.25,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months, while passing order on quantum of sentence on 08.05.2014.

I have heard learned counsel for the petitioner No.1, learned State counsel and learned counsel for respondent No.2 and with their able assistance have gone through the record of the case.

Learned counsel for petitioner No.1 has argued that in the present case, respondent No.2 (complainant) has failed to prove the source of money which was alleged to have been handed over to the petitioners for the job of Vijay Kumar in the customs department.

It is further argued by the learned counsel for the petitioner No.1 that in the marriage of daughter of respondent No.2 with Vijay Kumar they had spent handsome amount on marriage, being real sister but to grab the said amount, the petitioners had been involved in a false case and the appellate Court had specifically found out that non-joining of Krishan Sharma of Delhi as accused or prosecution witness is the fault of the Investigating Officer.

Per contra, the learned State counsel and counsel for respondent No.2 (complainant) have argued that the prosecution had proved the case against petitioner No.1 (since petitioner No.2 had been expired) beyond the reasonable doubt and even otherwise the learned appellate Court has taken lenient view while passing order on quantum of sentence.

As discussed above, petitioner No.1 is the real sister of respondent No.2 (complainant) and by now she is of 70 years. The learned State counsel, during the course of arguments, has placed on record a letter dated 16.10.2019 issued by

the Superintendent of Jail, Sirsa and addressed

to Advocate General Haryana indicating that petitioner No.1 was not admitted to jail. Same is taken on record as Mark 'X'.

Even otherwise Krishan Sharma who took signatures of Vijay Kumar to get him job in the customs department did not support the case of prosecution as Krishan Sharma was neither a witness nor has been arrayed as accused nor do I find there is any inducement as far as Geeta Sharma is concerned.

Order dated 08.05.2014, passed by Additional Sessions Judge, Sirsa indicates that fine of Rs.50,000/- (i.e. Rs. 25,000/- qua each petitioner) has been paid and they were allowed/granted one month's time to file appeal and sentence awarded was suspended for one month.

After taking into consideration the arguments advanced by learned counsel for the parties and going through the record of the case, the revision petition is allowed and the judgment dated 30.04.2014 and order of sentence dated 08.05.2014 passed by Additional Sessions Judge, Sirsa are set aside while upholding the judgment dated 07.05.2013 passed by Judicial Magistrate Ist Class, Ellenabad. Petitioner No.1, Geeta Sharma is acquitted of the charges framed against her.

24.10.2019

pooja saini

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No