

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

236

CRR No.2046 of 2009

Date of Decision: 12.2.2020

SHAM SUNDER AND ANR.

.....Petitioners

Vs

U.T CHANDIGARH

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.S.D.Sharma, Sr.Advocate with
Mr.Ved Priya Malik, Advocate
for the petitioners.

Mr.Rajiv Vij, A.P.P.U.T.Chandigarh.

RAJ MOHAN SINGH, J. (Oral)

Petitioners were convicted under Sections 420 read with Section 120-B IPC vide judgment dated 25.2.2008 passed by the Judicial Magistrate, Ist Class, Chandigarh. Vide order of the even date, the petitioners were sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.250/- along with default clause.

Petitioners remained unsuccessful before the lower Appellate Court and the appeal was dismissed on 7.7.2009.

Petitioner No.1 Sham Sunder son of Jagan Nath was allotted dwelling unit No.2066 in Sector 40-C, Chandigarh vide allotment dated 22.1.1981. Allegations are that subsequently

petitioners also got allotment of House Nos. 4598 and 5316 in Maloya Colony by submitting incorrect information to the Estate Office on affidavit. As per clause in the instructions, the amount deposited by the petitioners was forfeited on detection of fraud in the context of double allotment. Petitioners were chargesheeted under Section 420 read with Section 120-B IPC.

Learned senior counsel for the petitioners states that petitioner No.1 has expired on 11.2.2017. Petitioner No.2 is an old lady of 75 years of age and is keeping indifferent health. Dwelling units have already been resumed and the amount deposited by the petitioners already stood forfeited to the Chandigarh Housing Board. The remaining accused-petitioner is not an accused of any perjury which in the present context can be termed as an attempting cheating, which could not culminate in any wrongful gain to the petitioners or wrongful loss to the Chandigarh Housing Board.

Learned counsel for the respondent has produced custody certificate of petitioner No.2 to show that before grant of bail she had undergone 2 days of custody as under trial and after conviction, she had undergone 1 month and 16 days of sentence at the time of granting benefit of suspended sentence during pendency of the appeal. By now she has undergone 1 month and 18 days of actual sentence.

Learned senior counsel for the petitioners states that

the revision qua petitioner No.1 stands abated and he wishes to argue this revision petition only to the extent of quantum of sentence qua petitioner No.2. Learned counsel further prays that in view of old age of petitioner No.2 and different ailments with which she is suffering from, a sympathetic consideration be made for reducing the sentence of petitioner No.2 to the period already undergone by her.

Learned counsel for the petitioners relied upon **CRR No.4196 of 2015** titled **Ajay Kumar vs. State of Haryana** decided on 15.12.2015 and **CRR No. 2976 of 2015** titled as **Mehar Singh vs. State of Haryana** decided on 10.2.2016 and contended that this Court can interfere on the quantum of sentence in view of period already undergone by the petitioner and also in view of financial capacity and medical status of the convict, though the said orders were passed in the context of awarding some compensation to the victims in terms of Section 357 (A) Cr.P.C.

Learned counsel for the respondent, however, opposed the prayer on the ground that the petitioners have attempted to cheat the respondent by way of filing wrong affidavit and got the allotment of two tenements which on finding to be a case of fraudulent allotment stood cancelled and the amount has already been forfeited.

No other offence has been alleged against the

petitioners except offence under Section 420 read with Section 120-B IPC.

Keeping in view the antecedent behaviour of petitioner No.2, particularly when her husband-petitioner No.1 has already died, and she is 75 years of age and suffering from numerous ailments, I hereby reduce the sentence of petitioner No.2 to the period already undergone by her. Since she is living in poverty, therefore, no enhancement in fine is ordered against her.

Petition stands disposed of accordingly.

February 12, 2020

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No