

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Revision No. 254 of 2020 (O&M)

Date of Decision: 25.05.2021

Gurdeep Lal

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Neeraj Jain, Advocate
for the petitioner.

Mr. R.S.Thind, Deputy Advocate General,
Punjab, for the respondent.

Anil Kshetarpal, J.

1. The petitioner is a convict who has assailed the correctness of the impugned judgments passed by the trial Court and the Appellate Court convicting him under Section 420 IPC to undergo rigorous imprisonment for a period of two years and to pay a fine of ₹ 1,000/-, in default of payment thereof, to undergo further simple imprisonment for a period of one month.

2. Normally, while hearing the revision petition under Section 401 Cr.P.C., the High Court is not required to re-appreciate the evidence unless the attention of the court is drawn to any substantial error or perversity in the impugned judgments. However, on the first reading of the impugned judgments, this Bench was prompted to examine the case deeply, although, learned counsel representing the petitioner had addressed the Court only on the aspect of reduction of the sentence to the period already undergone.

3. In short, the case of the prosecution is that the FIR No. 160, dated 10.12.2015, was registered on the basis of an application moved on 13.03.2015 by Mohan Lal to the Senior Superintendent of Police, Hoshiarpur, alleging that the petitioner defrauded his son Vijay Kumar of ₹

receipt of the amount, neither the petitioner sent his son to Italy nor returned the amount. The first informant had paid the above said amount after selling a plot measuring 8 marlas for an amount of ₹ 1,60,000/-. The first informant has also spent ₹1,50,000/- on efforts to recover the amount.

4. The police, after completion of the investigation, filed a final report under Section 173 Cr.P.C., a copy whereof was supplied to the petitioner. Thereafter, the Judicial Magistrate, finding that a *prima facie* case is made out, framed the charge under Section 420 IPC.

5. The prosecution has examined the following witnesses to prove its case:

- i) PW.1 Mohan Lal (first informant);
- ii) PW.2 Balwinder Singh, who deposed that his brother Resham Singh has purchased a plot measuring 8 marlas from the first informant.
- iii) PW.3 Jasbir Lal, appeared to corroborate the case of the prosecution. He claims that when Mohan Lal paid the amount of ₹ 1,00,000/- to the petitioner, he along with Vijay Kumar were present.
- iv) PW.4 Resham Singh is the purchaser (vendee) of the plot from the first informant vide sale deed dated 14.12.2009.
- v) PW.5 Bharpur Singh has proved the settlement Ex.PB. being its attesting witness.
- vi) PW.6 Gurdial Singh, Assistant Sub Inspector, had investigated the case as an Investigating Officer.
- vii) PW.7 Gurminder Singh, Assistant Sub Inspector, proved

memo(s) of arrest-cum-intimation and personal search of the accused.

viii) PW.8 Jyoti Brahmswaroop Bali, Registration Clerk, has been examined to prove the sale deed dated 14.12.2009.

6. Statement of the petitioner under Section 313 Cr.P.C. was recorded.

7. As already noticed, the Judicial Magistrate found that the prosecution has successfully proved its case against which the appeal has also been dismissed.

8. This Court has perused the record requisitioned from the courts below.

9. Before this Bench proceeds to examine the case, it is important to note that the offence of cheating is defined in Section 415 IPC whereas Section 420 IPC provides that if the offence of cheating on dishonest inducement in delivery of property is proved, the accused shall be liable to be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The aforesaid provisions are extracted as under:-

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that

person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

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420. Cheating and dishonestly inducing delivery of property.

—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine”.

10. On careful perusal of Section 415 IPC, it is apparent that the offence of cheating requires the prosecution to prove that the accused deceitfully or dishonestly induced a person to deliver any property. The ingredients of the offence of cheating have been dissected in para 10 by the Hon’ble Supreme Court in ***S.W. Palanitkar and Others v. State of Bihar and Another (2002)1 SCC 241***, which reads as under:-

“10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything

which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property”.

11. Still further, the prosecution is also required to prove that the accused had intention to deceive at the time when the inducement was made which in common parlance is known as “*mens rea*”. A reference in this regard can be made to the various judgments passed by the Hon’ble Supreme Court in ***G.V.Rao v. L.H.V.Prasad and Others (2000) 3 SCC 693***, ***Ajay Mitra Vs. State of M.P. (2003) 3 SCC 11***, ***Jaswantrao Manilal Akhaney v. The State of Bombay AIR 1956 Supreme Court 575*** and ***Mahadeo Prasad vs State of West Bengal AIR 1954 Supreme Court 724***.

11. At this stage, it is important to note that both the Courts below have failed to examine the case of the prosecution on these perspectives as to whether the prosecution has successfully proved the ingredients of the offence of cheating or not? It is for this reason, this Bench considered it appropriate to deeply examine the evidence of the case.

12. At this stage, it would be appropriate to extract the relevant portion of the deposition of the first informant before the Court:-

“PW.1 *Mohan Lal son of Bihari Lal, resident of Bham, P.S. Chabbewal, Tehsil and District Hoshiarpur on SA.*

The accused present in the court namely Gurdeep Lal had cheated me of an amount of Rs.1 lacs for sending my son Vijay Kumar abroad i.e. Italy. Said amount was arranged by me after selling my 15 marlas property. But, accused had

neither send (sic) my son abroad nor had returned the money. A compromise dated 3.11.2014 was also affected between us regarding that fact that the accused will return the money, but he had not done the same. I moved an application to SSP, Hoshiarpur being Ex.PA duly signed by me. My statement was also recorded by Incharge Economic Wing. I have brought the original compromise dated 03.11.2014 and the copy of the same is duly attached with Court file being Ex.PB which bears the signatures of accused as well as of mine and other attesting witnesses. My statement was also recorded by the police under Section 161 of the Cr.P.C. the amount of Rs.1 lac which was given to the accused by me was given in the presence of Jasbir Lal and Vijay Kumar at village Bham.

XXXXXmn

I cannot do any work because of the fact that my eyesight is weak.

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It is correct the sale consideration which I received from the purchaser of the land was deposited in my Bank Account which is in PNB Bank, Branch Bham, Hoshiarpur. But I cannot produce the passbook of the Bank or the Bank Statement pertaining to my Bank Account. Volunteered the said amount was given directly to the accused. I have no any documentary evidence regarding the alleged payment done to the accused nor I had any document which proves that the payment given to

the accused was obtained by selling the above said land.

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The accused has allegedly assured me that Visa will be arranged within two/three months and after that period I come to know that the accused is a fraudulent person and he is not going to arrange any Visa.

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Avtar Kaur is my real sister and Madan Lal is her husband (my jija).The accused was introduced by Madan Lal to me.

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The accused is having no office of travel agent. Nor I had enquired about any ID Proof of the accused pertaining to the fact that he is the travel agent. Nor I had ever seen any board or flex, TV/Newspaper advertisement pertaining to the fact that he is the travel agent. Nor I had enquired this fact from his village Jagpalpur or from the area of his residence at Phagwara. The passport of Vijay Kumar my son has been got prepared from Jalandhar, but I do not know the year of its issuance, it may be 2009 or 2010.

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But the accused was having no office.

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The accused may have for the first time metted me in the year 2010.

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It is correct that the agreement Ex.PB was executed in the Police Station”.

13. Similarly, the prosecution, in order to prove the offence, has also examined Jasbir Lal as PW3, who claims to be the witness to the payment of ₹1,00,000/- by the first informant to the petitioner.

14. It is appropriate to notice that the first informant, neither in the FIR nor in his deposition while appearing in the Court, alleges that he was deceitfully/dishonestly induced by the accused to part with ₹ 1,00,000/-. Further, it is not the case of the prosecution that at the time when ₹1,00,000/- was allegedly paid, the accused had intention to deceive the first informant. Thus, the case of prosecution lacks two basic ingredients of the offence.

15. Still further, on careful reading of the statement, it is apparent that the deposition of the first informant is full of inconsistency. Initially, he stated that he had first deposited the amount of sale consideration in his account in the Punjab National Bank, however, when he was further questioned to produce the bank statement, he changed his stand and voluntarily stated that the amount was directly given to the accused. He further stated that the total sale consideration was given to the accused. Thus, the statement of the first informant is inconsistent. The total sale consideration is ₹ 160,000/-. It is not the case of the prosecution that the entire amount of ₹ 160,000/- was paid to the petitioner. He further admitted that there is no documentary evidence for alleged payment. It is further admitted that the petitioner is the neighbour of his sister and it was Madan Lal, his brother-in-law (his Sister's husband), who had introduced the accused to him. The prosecution without any justification failed to examine

the said Madan Lal. The first informant had also failed to examine his son Vijay Kumar. As per the FIR, the petitioner has taken the amount from Vijay Kumar and not from the first informant. The first informant further admits that neither the petitioner has any office of travel agent nor he inquired about the aforesaid fact as to whether the accused is a travel agent or not. He made no inquiry at all in this regard.

16. Still further, it is not the case of the prosecution that on payment of ₹ 1,00,000/-, the petitioner had started the process of getting the passport or visa in favour of Vijay Kumar. It is also not the case of the prosecution that the petitioner on receipt of amount had got filled any application form for issuance of visa for the first informant's son to Italy. Still further, the first informant in his deposition alleges that the petitioner met him for the first time in the year 2010, whereas as per the case of the prosecution, the payment of ₹ 1,00,000/- was made on 13.11.2009. It is further admitted that the agreement Ex.PB was executed in the police station.

Both the courts have convicted the petitioner broadly on the following grounds:-

- a) Since the prosecution has alleged that there were several meeting for return of the amount and agreement Ex. PB was executed in the year 2014, hence the delay in lodging the FIR stood explained.
- b) Because the learned counsel representing the petitioner in the trial court suggested to the first informant during cross examination that Ex. PB was executed in the Police Station, therefore the petitioner admit the execution of

agreement.

- c) Because in the sale deed, it has been recorded that the amount of sale consideration has already been received at residence, therefore, the amount must be assumed to have been paid a month before the date of the sale deed.
- d) Enmity between the petitioner on one of hand and Madan Lal and his wife Avtar Kaur on other hand has not been proved by the defence.
- e) It is not necessary for the prosecution to examine Mr. Madan Lal.
- f) The admission of Jasbir Singh PW-3 that the sale deed was not executed in his presence does not adversely affect the case of prosecution.

Now let us critically analyse the reasons with reference to the evidence.

17. There is a delay of six years in lodging the FIR. Both the Courts below have found that the delay has been satisfactorily explained on the ground that there was a settlement Ex.PB on 03.11.2014 and the first informant has been repeatedly making request to the petitioner to return the amount. Both the Courts below have overlooked the deposition of the first informant. He has deposed that he came to know that the petitioner-accused is a fraudulent person within 2/3 months of making payment. Thus, once the first informant had come to know that the petitioner would not take steps to send his son to Italy or return the amount allegedly received, there was no occasion to wait for a period of six years before registration of the FIR. It

may noted here that neither the first informant in his deposition has stated that there were several meetings for return of the amount nor detail thereof has been provided. Hence, the prosecution has failed to explain the delay.

18. Next reason is with respect to the alleged admission of the petitioner to execution of the agreement Ex. PB. It is well settled that before the alleged admission of the accused is made the basis to convict the accused, it is incumbent for the court to examine as to whether such admission is clear and categorical. If the answer to the aforesaid question is in negative, it would not result in conviction of accused. In the present case, the counsel representing the petitioner while cross examining the first informant had given him suggestion that the agreement was executed at the Police Station. Hence, such suggestion, in the considered opinion of this bench, in the facts of the case, can not be read as admission of the offence. Still further, at the most, as per the aforesaid agreement, the petitioner has undertaken to return ₹50,000/- to the first informant on or before 20.02.2015. As per the case of the prosecution, in the year 2009, the amount of ₹ 1,00,000/- was paid to the petitioner, whereas the agreement provides for return of ₹ 50,000/- only. It is against normal prudence. Still further, even if, for one moment, it is accepted that such suggestion does amount to admission, still the agreement does not prove that the petitioner has deceitfully induced the first informant to part with ₹ 1,00,000/- or the petitioner had "*mens rea*" at that time.

19. With respect to the next reason, it would be significant to note that the first informant claims to have paid ₹ 1,00,000/- to the petitioner on 13.11.2009, whereas the sale deed is of dated 14.12.2009. Both the Courts

below have explained the aforesaid inconsistency with the explanation that in the sale deed, it has been recorded that the amount of sale consideration already stands paid at the residence of the vendor. However, there is no evidence to that effect. In the copy of the sale deed, it has been recited that the amount of sale consideration stood paid at the residence of the vendor. It is nowhere recorded that the amount of sale consideration was paid on or before 13.11.2009. The purchaser has been examined as PW.4. He also did not depose that he paid the amount of sale consideration to the petitioner or the first informant on or before 13.11.2009.

20. That, with respect to failure of the defence to prove the enmity between the petitioner on one hand and Madan Lal and Avtar Kaur on the other hand, it may be noted that the Courts have overlooked that it is for the prosecution to initially prove its case and thereafter, the correctness of the defence evidence, if any, can be examined.

21. Further the courts below have wrongly found that non-examination of Madan Lal has no adverse impact on the case of prosecution. As the case of the first informant, it was Madan Lal who had introduced him to the petitioner. To prove the aforesaid fact, the prosecution was required to examine Madan Lal. The prosecution is required to produce the best evidence and in absence thereof, the court may draw adverse inference. In the facts of this case, although, no case of adverse inference has been made out, however, it can be safely concluded that the prosecution has failed to prove its case.

22. Further, Jasbir Singh was not witness to the sale deed, hence, his absence at the time of registration of the sale deed is not relevant.

23. In view the aforesaid discussion, this Bench has come to a conclusion that the judgments passed by both the Courts below suffer from substantive errors going to the roots of the case. Both the Courts below have also failed to examine that the prosecution is required to prove its case beyond shadow of reasonable doubt. The standard of proof required to successfully prove the offence in a civil case is different from criminal. In civil case the plaintiff is required to prove its case by a preponderance of evidence whereas in a criminal case, the prosecution is required to prove its case beyond shadow of reasonable doubt. No doubt, ordinarily, the presiding judges are simultaneously required to decide civil as well as criminal cases and hence, the distinction gets overlooked. However, it is expected from them that before convicting any accused, the presiding judges should keep in mind the important distinction. In the present case, as already noticed, the prosecution miserably failed to satisfy the aforesaid test.

24. Hence, while allowing the revision petition, the judgments passed by both the Courts below, are set aside. The petitioner be set free forthwith, if not required in any other case.

25. Let a copy of the judgment be forwarded to the concerned presiding judges.

26. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 25, 2021
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No