

103

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

CRR-1137-2021 (O&M)

Date of decision : 05.10.2021

Jeet Singh and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vivek Goyal, Advocate for the petitioners.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment dated 07.12.2015 passed by the Judicial Magistrate Ist Class, Kurukshetra, as well as the judgment dated 27.01.2020 passed by the Additional Sessions Judge, Kurukshetra.

The Judicial Magistrate Ist Class, Kurukshetra, vide its judgment dated 07.12.2015, had convicted the present petitioners under Section 420 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) read with Section 120-B of the IPC and had sentenced the petitioners to undergo rigorous imprisonment for a period of three years and also liable to pay a fine of Rs.10,000/- each and in default of payment of fine, they were further directed to undergo rigorous imprisonment for a

period of three months each.

An appeal preferred by both the petitioners against the abovesaid judgment was dismissed by the Additional Sessions Judge, Kurukshetra vide its judgment dated 27.01.2020 as far as conviction under Sections 420 and 120-B of the IPC is concerned. However, the sentence which had been imposed by the trial Court was modified and the rigorous imprisonment of three years was reduced to one year.

Against the abovesaid judgments, the present Criminal Revision Petition has been filed.

The brief facts of the prosecution case are that complaint No.165 dated 31.08.2009 was made by Mahipal son of Mahavir Singh resident of District Kurukshetra, for registration of the FIR against both the petitioners namely Jeet Ram and Gian Singh and the other accused persons namely Jiya Lal, Kavita and Javed Faizal. As per the said complaint, it had been stated that the complainant was an agriculturist by profession and had 10 acres of land and he used to earn his livelihood by doing agricultural work and he had two sons, one of whom was Mehak Singh, who was matriculate pass and on 06.06.2007, the complainant met Jiya Lal son of Sh. Jagat Singh at his shop and during the conversation with the said Jiya Lal, the complainant learnt that Jiya Lal did the job of emigration and that he had also sent his nephew Suresh to France, who was now earning a handsome income there and he could also send Mehak Singh (son of the complainant) abroad to earn a high income. In the meantime, Gian Singh (petitioner No.2) who is the brother of the accused

Jiya Lal, also came there and the said Gian Singh told the complainant that the financial condition of his house had completely changed after his son had gone abroad and even the said Gian Singh told the complainant to send his son abroad for securing his future. The complainant was told that a sum of Rs.8,50,000/- would be required for sending his son abroad. The accused persons including the petitioners assured the complainant that his son would get a job over there and in view of the said inducement, the complainant on 10.09.2007, delivered the amount of Rs.3,00,000/- to the accused persons, after borrowing the same from the Commission Agent and further a sum of Rs.50,000/-, passport of his son namely Mehak Singh, 8 photographs and other necessary documents, were also delivered to the accused persons. The accused persons told the complainant that they would approach one Javed in Delhi who had connections with the officials of the Embassy and also told the complainant to make arrangement for the remaining Rs.5,00,000/-. The period of one year had lapsed and neither the son of the complainant was sent abroad nor the money was returned. On 21.12.2008, when Jiya Lal handed over four cheques to the complainant, which were issued by Javed Faizal in favour of Jiya Lal, each amounting to Rs.75,000/-, and after presentation of the said cheques and dishonour of the same, a complaint was filed on the plea that an amount of Rs.3,50,000/- had been taken from the complainant by fraudulently inducing him. On the basis of the said allegations, the FIR in question i.e. FIR No.101 dated 31.08.2009 under Section 24 of the Emigration Act, 1983 and Sections 406, 420 and 120-B

of the IPC, was registered. Jiya Lal fled away from the village and thus, accordingly, was declared a proclaimed offender. Even Javed Faizal was declared a proclaimed offender.

The challan was presented and the charges were framed and the prosecution had examined 9 witnesses, the details of which are as under:-

1. PW1-Mahipal-Complainant
2. PW2-Chuhad Mal
3. PW3-Labh Singh
4. PW4-Mehak Singh
5. PW5-Rishi Pal
6. PW6-Ved Parkash
7. PW7-SI Ram Pal
8. PW8-SI Gulab Singh
9. PW9-ASI Surender Kumar

PW1-Mahipal, who is the complainant, had reiterated his version as given in the complaint.

PW2-Chuhad Mal had also stated on oath that on 10.09.2007, complainant-Mahipal alongwith the accused persons, had come to his Commission Agency shop and the amount of Rs.3,00,000/- was taken by Mahipal which was then handed over to the accused persons.

PW3-Labh Singh had also testified that he had accompanied the complainant to Village Megha Majra, where he had handed over Rs.50,000/- alongwith some documents to the accused persons.

PW7-SI Ram Pal was the Investigating Officer of the case, who had also proved the case of the prosecution.

PW4-Mehak Singh (son of the complainant) was also examined and all the other said witnesses were also examined and they had also fully supported the case of the prosecution.

Although, the said witnesses were cross-examined, however, nothing material came out in their cross-examination so as to cause a dent in the case of the prosecution, moreso qua the petitioners.

On the basis of evidence adduced, the Judicial Magistrate Ist Class, Kurukshetra, convicted both the petitioners under Section 420 of the IPC read with Section 120-B of the IPC. However, Kavita wife of Jiya Lal was acquitted and as stated hereinabove, Jiya Lal and Javed Faizal, were declared proclaimed offenders and both the petitioners were sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each. The petitioners filed the appeal before the Additional Sessions Judge, Kurukshetra, who, after considering the entire material from the record as well as the evidence and the documents, upheld the conviction of the petitioners under Sections 420 and 120-B of the IPC but however, reduced the sentence from 3 years rigorous imprisonment to 1 year rigorous imprisonment. It is against the said orders that the present Criminal Revision Petition has been filed.

During the course of arguments, learned counsel for the petitioners has submitted that he is not challenging the conviction of the

petitioners under Sections 420 and 120-B of the IPC but is praying for leniency and as far as the sentence which had been awarded to the petitioners is concerned and with respect to the same, it has been submitted that the incident in question is of the year 2009 and almost 12 years have gone by and the petitioners have been suffering agony of trial/appeal/revision for all these years and the petitioners were granted the bail/suspension of sentence but the petitioners have never misused the said concession. It is further submitted that petitioner No.1 is 52 years of age whereas petitioner No.2 is 68 years of age and both of them are the sole bread winners of their respective families. It is further submitted that Jeet Singh has already undergone actual custody of 1 month and 28 days whereas Gian Singh has already undergone 2 months and 9 days of actual custody out of total sentence of rigorous imprisonment of one year.

In support of his arguments, learned counsel for the petitioners has relied upon ***CRR-1931-2010*** decided on 23.07.2019 titled as ***Chander Bhan Vs. State of Haryana*** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495*** was considered. Further reliance has been placed upon a judgment of this Court in ***CRR-4830-2016*** decided on 08.03.2017 titled as ***“Balwinder Singh @ Binder Vs. State of Punjab”*** in which case also the sentence was reduced to four months in a case of

conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra) was considered. Further, reliance has also been placed upon case of ***Jaswant Singh Vs. State of Punjab***, reported as ***2020 (1) RCR (Criminal) 163***, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (supra), the sentence was reduced to already undergone.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of State of Haryana and has submitted that he is fully prepared to argue this matter. He has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioners as well as having never misused the concession of bail/suspension of sentence has not been disputed by the learned State counsel.

This Court has heard the learned counsel for the parties and perused the record.

As far as conviction of the petitioners under Sections 420 and 120-B of the IPC is concerned, this Court is of the view that both the Courts below have considered the entire evidence and record in detail and have rightly come to the conclusion that the petitioners are liable for the

said offences. PW1-Mahipal who is the complainant and PW4-Mehak Singh who is son of the complainant, had specifically reiterated the case in the complaint and had stated that the amount of Rs.3,50,000/- was paid to the accused persons and that they had been fraudulently induced in believing that the son of the complainant i.e. Mehak Singh-PW4 would be sent abroad. However, neither the son of the complainant was sent abroad nor the money was returned. PW2-Chuhad Mal, who was the Commission Agent, had also made statement before the Court that an amount of Rs.3,00,000/- was borrowed by the complainant from him and the said amount was then given by the complainant to the accused persons in his presence. Even Labh Singh-PW3 had proved the entrustment of Rs.50,000/- to the accused party by the complainant. The issuance of cheques by Javed Faizal which were given by one of the accused Jiya Lal to the complainant, would also show that the liability has been admitted. The said witnesses have been cross-examined in detail but nothing has come out in their cross-examination so as to cause a dent in the prosecution case qua the petitioners and thus, their conviction is upheld.

As far as sentence which has been awarded to the petitioners is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2009 and the petitioners have never misused the concession of bail/suspension of sentence and the petitioners are sole bread winners of their respective families and have already undergone actual custody of 1 month and 28 days & 2 months

and 9 days, respectively, out of the total sentence of rigorous imprisonment of one year each and also in view of the judgments relied upon by learned counsel for the petitioners, it is ordered that sentence awarded to the petitioners is reduced to the period already undergone by them. The same would, however, be subject to the petitioners' depositing the amount of Rs.50,000/- before the Chief Judicial Magistrate, Kurukshetra, within a period of two months from the date of receipt of certified copy of the present judgment.

The Judicial Magistrate Ist Class, Kurukshetra is directed to issue notice to the complainant, after deposit of abovesaid Rs.50,000/- by the petitioners, so that the same can be released to the complainant. It is made clear that in case, the amount is not deposited within a period of two months from the date of receipt of certified copy of the present judgment, the present Criminal Revision Petition would be deemed to have been dismissed in toto.

Accordingly, the present Criminal Revision petition is disposed of in the abovesaid terms.

Since, the main case has been decided, application bearing CRM-33134-2021 for suspension of sentence of applicants-petitioners is rendered infructuous and is disposed of as such.

05.10.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**