

CRR-555-2009

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

CRR-555-2009 (O & M)
Date of decision: 13.09.2021

Shamim

...Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sanjeev Kumar Panwar, Advocate,
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Case was taken up for hearing through video conferencing.

The petitioner alongwith co-accused was tried in case bearing FIR No.208 dated 27.12.2003, registered at Police Station Sadar Yamuna Nagar, under Section 420 IPC. Learned Judicial Magistrate Ist Class, Jagadhari, vide judgment dated 08.03.2008 and order dated 10.03.2008, found the petitioner and co-accused Irfan guilty for the offence punishable under Section 420 read with Section 34 IPC and sentenced them as under:

Section	Sentence
420 read with Section 34 IPC	<i>To undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.2000/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months each.</i>

However, co-accused Yakub stood acquitted of the charge framed against him.

Aggrieved of the judgment and order passed by the learned Judicial Magistrate Ist Class, Jagadhari, the petitioner

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preferred an appeal. However, vide impugned judgment dated 17.02.2009, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari, partly allowed the appeal and reduced the sentence imposed upon the petitioner to two years instead of three years as awarded by the trial Court. However, the fine imposed upon the petitioner by the trial Court under the aforesaid section remained intact.

The facts of prosecution case, as noticed by the learned Additional Sessions Judge, Jagadhari, are as under:

“The brief facts leading to filing of this appeal are that the present appellant, namely, Shamim alongwith two others, namely, Irfan and Mohammad Yakub were booked in a case bearing FIR No.208 dated 27.12.2003, under Section 420 IPC by the police of Police Station Sadar, Yamuna Nagar at the instance of PW 1 Jai Singh-complainant who in his statement Ex.PA made to the police had stated that he alongwith his brother Ram Singh had purchased land measuring 26 kanals at old Damla. There exists a tomb (buried place/turbat) of Peer and there was an old saying that old treasure was hidden in his field. Yakub, mechanic asked him to meet his cousin Irfan who would help him to discover the treasure. On 18.12.2003, Yakub brought Irfan to his field. Irfan after inspecting the field told that the treasure was hidden in the field and he would help him to discover the same and required Rs.4000/- for bringing some goods from Saharanpur. Besides that he asked to keep ready further sum of Rs.12000/- for making search of treasure. He (complainant) handed over that much amount to Irfan in the presence of his son Rakesh Kumar. On 20.12.2003, Irfan visited his fields and sprinkled some water in the fields besides fixing four iron nails. He

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again visited after two days in the evening alongwith Shamim Ahmed. On that day, at about 10 PM, they visited the fields alongwith a 10 kg. wheat, bucket full of water and other goods. After performing some magic, he lit fire in the bucket full of water. They also excavated underneath a brass vessel. Five kilogram wheat was put in the empty pit. Irfan gave him a silver coin from the vessel and put the same alongwith wheat in a plastic bag. He asked him to perform some ceremonies and to open the urn after eleven Saturdays. If the complainant opened the vessel prior to that, the treasure will become soil and his eldest son will die. Then, accused Irfan and Shamim went away after taking Rs.12,000/-. He got suspicion that some cheating has been committed with him. He reported the matter to the police. On the basis of his statement Ex.PA, the present case was registered. During investigation, statements of the witnesses were recorded; rough site plan of the place of occurrence was prepared; accused were arrested and after interrogation, their disclosure statements were recorded and in pursuance thereof, recoveries were effected. On completion of all formalities of investigation, the final report under Section 173 Cr.P.C. was presented before the Area Magistrate against all the three accused.”

After completion of the investigation and necessary formalities, challan was presented. Thereafter, charge was framed against the petitioner and the co-accused under Section 420 IPC.

The prosecution examined as many as twelve witnesses. Thereafter, statements of the petitioner and co-accused under Section 313 Cr.P.C. were recorded, wherein they denied the charge and pleaded innocence. However, they did not lead any

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evidence in their defence.

On the basis of the evidence led, it stood proved before the learned trial Court that the petitioner along with co-accused in furtherance of their common intention had induced the complainant and PW Jai Narayan to hand over a certain amount with a promise to excavate hidden treasure from their house/field but after performing of rites/magic, except few coins, no treasure was handed over to them. Resultantly, the petitioner was convicted under Section 420 read with Section 34 IPC. He alongwith co-accused was, accordingly, sentenced under the aforesaid section, as noticed above.

Aggrieved of the judgment and order passed by the learned trial Court, the petitioner preferred an appeal before the learned Sessions Judge, Yamuna Nagar at Jagadhari. However, vide judgment dated 17.02.2009 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhari, the appeal was partly allowed, as noticed above.

Still aggrieved, the petitioner has preferred the present revision petition.

Learned counsel for the petitioner has contended that the name of the petitioner had though figured in the alleged incident of 22.12.2003, yet prior to the same, no role had been ascribed to him. No recovery had been effected from the petitioner. The disclosure statement of the petitioner was recorded on 30.12.2003, which has no evidential value in the eyes of law. He has further contended that the identity of the person accompanying the main accused on the date of occurrence had not

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been established. He was not known to the complainant or his son.

Learned counsel for the petitioner has further contended that the petitioner had not given any promise or inducement to the complainant to part with the money and, therefore, the ingredients of the offence punishable under Section 420 IPC are neither attracted nor satisfied qua the petitioner. Apart from the above, there is a delay in the registration of the FIR. The alleged incident took place on 22.12.2000, but the matter was reported to the police on 27.12.2003.

Per contra, learned State counsel has vehemently contended that the presence of the petitioner on the date when the occurrence took place, had been duly established. PW 1 Jai Singh (complainant) and PW 10 Jai Narain @ Kaku categorically stated that the accused present in the Court had cheated them.

I have heard the learned counsel for the parties.

Perusal of record would reveal that PW 1 Jai Singh (complainant) and PW 10 Jai Narain @ Kaku categorically stated the manner in which the petitioner alongwith co-accused had cheated them. They also stated that the accused present in the Court, were the same persons, who had played fraud upon them. There was no suggestion in the cross-examination that the petitioner had not accompanied co-accused Irfan on the date of occurrence. The delay, if any, in reporting the matter in the cases like present one, does not adversely affect the prosecution version keeping in view the peculiar facts and circumstances of the present case.

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Both the Courts below after having scrutinized the evidence on record, have rightly held that the petitioner was acting jointly with co-accused Irfan actuated by one and the same common intention i.e. to cheat the complainant on the pretext of discovery of hidden treasure from his field, and that there is direct evidence about the participation of the petitioner in the occurrence.

Learned counsel for the petitioner could not point out any perversity or illegality in the findings recorded by the Courts below. Thus, in my opinion, in view of the evidence on record, there is no scope for interference in the findings of the Courts below, so far as the conviction part is concerned. Hence, the conviction of the petitioner under Section 420 read with Section 34 IPC is upheld.

However, keeping in view the fact that the petitioner has six children; that there is nobody else to earn the livelihood and that he has been facing the agony of protracted trial for the last about 18 years, in my opinion, no useful purpose would be served by sending the petitioner behind the bars once again, to undergo the remaining period of sentence. As per the custody certificate, the petitioner has already undergone the actual sentence of 03 months and 05 days, out of the substantive sentence of two years imposed upon. Thus, the ends of justice would be suitably met, if the sentence imposed upon the petitioner is reduced to the period already undergone by him.

In view of the above, while upholding the conviction of the petitioner under Section 420 read with Section 34 IPC, the

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substantive sentence imposed upon the petitioner is reduced to the one already undergone by him. The fine imposed upon the petitioner along with its default clause, is maintained.

Revision Petition is disposed of in the above terms.

13.09.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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