IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.-3373-2017 (O&M)
Date of decision: 05.10.2021

Deepak and another **...Petitioners**

Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Gopal Sharma, Advocate for
Mr. Rajat Gautam, Advocate for the petitioners.

Mr. Chetan Sharma, AAG, Haryana.

(Through Video Conferencing)

ARVIND SINGH SANGWAN, J. *(Oral)*

Prayer in this revision petition is for setting aside the judgment of conviction dated 05.11.2015 and order of sentence dated 07.11.2015 passed by the trial Court as well as the judgment dated 30.08.2017 passed by the lower appellate Court vide which, the appeal filed by the petitioners was dismissed.

The brief facts of the case as noticed in the judgment of the trial Court are as under:-

> *"....Brief facts as culled out from the report under section 173 of Cr.P.C are that on 30.6.2006 an application bearing no. 1193- Pesi dated 28.06.2006 was received from the office of Superintendent of Police, Rohtak through which a complaint by complainant Shri Krishan Kumar Verma, Senior Branch Manager, Bank of India, Rohtak was received to the concerned Police Station. It is mentioned in the said complaint that complainant is Bank of India, Rohtak and the present complaint is lodged with respect to cash credit limit/loan facility availed by M/s Deepak Trading Company, Proprietor Deepak Kumar Garg. The said person availed the said Cash Credit facility on 1.10.2003 for Rs. 5 lacs and an additional limit on 21.7.2004 for Rs.1 Lac and the*

housing loan in the name of Deepak Kumar Garg and Smt. Santosh Rani on 21.1.2004 for Rs.2.25 lacs. It is further stated in the complaint that Deepak Kumar Garg approached the complainant bank for granting cash credit facility of Rs. 5 lacs against security of equitable mortgage of house no. 329/8, Gurucharanpura near Khosla Building, Hisar road, Rohtak. Both the accused requested for the said loan against the equitable mortgage of the said house as both the accused persons were owner of the said house. The complainant bank granted the said cash credit limit of Rs. 5 lacs to the accused persons which were availed in the name of M/s Deepak Trading Company against the security of equitable mortgage of the said house. Both the accused persons delivered the said title deeds pertaining to the said property to the complainant bank representing the said title deeds to be genuine and original for creation of equitable mortgage in order to secure the said loan. It is further stated that subsequently on 27.04.2004 accused persons requested for enhancement of the said cash credit limit by Rs.1 lac. The said accused also availed a housing loan of Rs.2.25lacs on 21.1.2004 from the complainant bank against the security on equitable mortgage of the said house. It is further stated in the complaint that the title deeds deposited by the accused persons to the bank is forged and thus, the accused persons have committed a fraud upon the complainant bank. The said accused persons intentionally delivered forged title deeds to the complainant bank knowing them to be forged documents and prepared the same with the intention to cause wrongfully loss to the complainant bank. The loan availed by the accused persons is a public money It is further stated that the complainant bank came to know about fraud during the inspection on 28.4.2006 when the bank came to know that the accused persons have availed loan from other bank also. The accused persons has committed fraud upon the complainant by preparing and delivering forged title deeds on original stamp papers. Accordingly, it was prayed that legal action be taken. On the basis of said application, formal FIR was registered. Investigation was conducted. Statements of witnesses were recorded. Accused were arrested and were produced in the Court from where they were released on bail. After completion of necessary investigation, the challan was prepared and presented in the court for trial."

The trial Court thereafter, after holding a full length trial held the petitioners guilty of offence under Section 420, 467, 468 and 471 of the IPC and sentenced them to undergo 03 years of rigorous imprisonment and to pay a fine of Rs.4,000/- each and in default of payment of fine to further undergo simple imprisonment for a period of 03 months.

Thereafter, petitioners preferred an appeal before the lower appellate Court and the same was also dismissed vide order dated 30.08.2017.

On 20.09.2017, while issuing notice of motion, it was observed that the petitioners are ready to settle the issue with the complainant-Bank on reasonable terms regarding the loan amount and the Bank of India, Rohtak Branch through it Manager was impleaded as respondent No.2. Noticing the fact that both the petitioners have undergone 03 months and 27 days of sentence, the remaining sentence was suspended to enable the petitioners to effect a proper settlement with the Bank. Thereafter, on 27.07.2018, Ashok Kumar, Official of Bank of India, Rohtak Branch appeared before this Court and produced the authority letter along with letter bearing Ref. No.RR.3373/2017 dated 05.05.2018, which was taken on record stating that the Bank has compromised the matter with the petitioners and nothing is due against them and this petition is pending since then.

Learned counsel for the petitioners submits that in fact there was no *mens rea* on the part of the petitioners as because of their financial constraints, they were not able to pay the loan amount in time for which, the FIR was registered.

Learned counsel for the petitioners further submits that now the entire amount has been paid to the Bank as per the letter dated 05.05.2018 issued by the Manager, Bank of India, Rohtak Branch and therefore, he does not intend to press the present petition on merit and prays that the sentence may be reduced to the sentence already undergone by the petitioners in view of the compromise arrived at between the parties.

Learned counsel for the petitioners relies upon a Division Bench judgment of this Court in ***Sube Singh and another vs. State of Haryana and another, 2013 (4) R.C.R. (Criminal) 102,*** wherein, in similar circumstances, the sentence was reduced to the period already undergone by the accused.

After hearing learned counsel for the parties, considering the fact that the petitioners, who are husband and wife, aged about 53 years and 54 years respectively, are not involved in any other case and have faced the agony of protracted trial since 2006, when the FIR was registered and also considering the fact that the petitioners have already settled the dispute with the complainant-Bank, therefore, considering the mitigating circumstances, this petition is partly allowed while upholding the impugned judgment of conviction and order of sentence passed by the trial Court as well as the judgment passed by the lower appellate Court, the sentence awarded to the petitioners, is reduced to the sentence already undergone by them.

In view of the above, this petition is disposed of with the above modification in the order of sentence.

(ARVIND SINGH SANGWAN)
JUDGE

05.10.2021
Chetan Thakur

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*