

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

CRR-1446-2021(O&M)

Date of decision : 17.11.2021

Jaspal Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Pawandeep Singh, Advocate
for the petitioner.

Mr.Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a criminal revision petition challenging the judgment dated 04.11.2015 vide which the Sub Divisional Judicial Magistrate, Khamanon, had convicted the petitioner under Section 420 IPC and sentenced the petitioner to undergo rigorous imprisonment for a period of 12 months and also directed the petitioner to pay fine of Rs.3000/- in default of payment of which the petitioner was sentenced to further undergo rigorous imprisonment for one month. Challenge is also to the order dated 15.09.2021 vide which the appeal filed by the petitioner had also been dismissed.

The brief facts of the prosecution case are that application dated 09.08.2007 was received in the office of SSP, vide which the XEN, Water Supply and Sanitation of Fatehgarh Sahib, had requested for taking action against the petitioner, who was the Gardner-cum-Chowkidar. In the

said application, the petitioner was accused of having collected money from the people of village Bohar, Abdullapur and Hargana, for installing water connections in their houses illegally although, he had no right to release the water to the inhabitants of the village and water connection has been given in unauthorized and illegal manner. The matter was inquired and the DSP, Fatehgarh Sahib, had given his report mentioning therein that the petitioner in connivance with M.K.Bhatnagar, JE, had committed the said crime and that one Ashok Kumar had also helped in committing the said crime. Subsequently, an application was moved by M.K.Bhatnagar and Ashok Kumar, regarding their innocence, requesting for an inquiry and on the said application, an inquiry was conducted and as per the inquiry, these two persons were found to be innocent and it was found that it was the present petitioner who had committed the offence and accordingly, the petitioner was charged under Section 420 IPC.

The prosecution had examined 19 witnesses, the details of which has been given hereinunder:-

1. PW-1 Rajinder Singh, XEN
2. PW-2 Jasvir Kaur
3. PW-3 Manjit Kaur
4. PW-4 Avtar Singh
5. PW-5 Balwinder Singh
6. PW-6 Mohan Lal
7. PW-7 Jaswinder Kaur
8. PW-8 Bhupinder Singh
9. PW-9 Major Singh
10. PW-10 M.K.Bhatnagar

11. PW-11 ASI Harminder Singh
12. PW-12 Jasvinder Kaur
13. PW-13 Baldev Singh
14. PW-14 Ajmer Singh
15. PW-15 Balwant Singh
16. PW-16 Balvir Kaur
17. PW-17 Jaswant Singh
18. PW-18 Harjit Singh XEN
19. PW-19 Inspector Devinder Singh

Statement of the petitioner under Section 313 Cr.P.C. was recorded. However, no defence witness was produced by the petitioner. The aforesaid prosecution witnesses had been examined and a set of them being consumers of the water scheme, had submitted that various amounts ranging from Rs.1500/- to Rs.2200/- were given to the petitioner for the purpose of getting water connection. The chart which has been made in paragraph 24 of the judgment of the appellate Court, is reproduced hereinbelow:-

Serial No.	PW	Name of Consumer	Amount handed over	Exhibit of affidavit
1	PW2	Jasbir Kaur	Rs.2000/-	Ex.PW2/A
2	PW3	Manpreet Kaur	Rs.2000/-	Ex.PW3/A
3	PW4	Avtar Singh	Rs.2000/-	Ex.PW4/A
4	PW5	Balwinder Singh	Rs.2000/-	Ex.PW5/A
5	PW6	Mohan Lal	Rs.2000/-	Ex.PW6/A
6	PW7	Jaswinder Kaur	Rs.2000/-	Ex.PW7/A
7	PW8	Bhupinder Kaur	Rs.2200/-	Ex.PW8/A
8	PW9	Major Singh	Rs.2200/-	Ex.PW9/A
9	PW12	Jasvinder Kaur	Rs.1500/-	Ex.PW12/A
10	PW13	Baldev Singh	Rs.2000/-	Ex.PW13/A
11	PW14	Ajmer Singh	Rs.2200/-	Ex.PW14/A

A perusal of the above would show that as per the said

witnesses, the total amount of Rs.22,100/- was paid by the said persons to the petitioner for getting their water connection released. Although some of the said witnesses had not come for cross-examination but, in any case their affidavits were on record and the record also showed that the water connection provided was not regularised and it was also found that the amount that was collected, was not accounted forward in the account of department concerned. On the basis of said evidence, the learned trial Court vide order dated 04.11.2015 had convicted and sentenced the petitioner for the offence under Section 420 IPC as is stated hereinabove. The petitioner filed appeal before the Additional Sessions Judge, Fatehgarh Sahib, who after reappreciating the entire evidence and documents on record, dismissed the appeal and upheld the conviction and sentence.

During the course of arguments, learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner under Section 420 IPC but is praying for leniency and as far as the sentence, which had been awarded to the petitioner, is concerned and with respect to the same, it has been submitted that the incident in question is of the year 2007 and almost 14 years have gone by and the petitioner has been suffering agony of trial/appeal/revision for all these years and the petitioner was even granted the bail/suspension of sentence but the petitioner has never misused the said concession. It is further submitted that petitioner is 60 years of age and is the sole bread winner of his family. It is further submitted that the petitioner has already undergone actual custody of approximately 2 months and 20 days out of total sentence of rigorous imprisonment of twelve months.

In support of his arguments, learned counsel for the petitioner

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. Karanbir Singh, AAG, Punjab, appears and accepts notice on behalf of State of Punjab 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 petitioner 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 petitioner under Section 420 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 petitioner is liable for the said offence.

In the present case as is apparent from the chart reproduced hereinabove, several witnesses had given their affidavits to the effect that they had, in all, paid an amount totalling to Rs.22,100/- to the petitioner for getting their water connection and said amount has not been accounted forward by the petitioner. The other witnesses had also fully supported the case of the prosecution and nothing had come out in the cross-examination so as to dent the case of the prosecution qua the petitioner and thus, the conviction of the petitioner is upheld.

As far as sentence which has been awarded to the petitioner 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 2007 and the petitioner has never misused the concession of bail/suspension of sentence and the petitioner is sole bread winner of his family and has already undergone actual custody of approximately 2 months and 20 days out of the total sentence of rigorous imprisonment of twelve months and also in view of the judgments relied upon by learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner is reduced from twelve months to six months. The fine is however enhanced from Rs.3000/- to Rs.22,100/-. Thus, the reduction of the sentence to 6 months would be subject to the petitioner depositing an amount of Rs.22,100/- with the department of Water Supply

and Sanitation of Fatehgarh Sahib, within a period of two months from the date of receipt of certified copy of the present judgment. It is however made clear that in case the said amount of Rs.22,100/- is not deposited within the stipulated period with the said department, the present petition would be deemed to have been dismissed.

Accordingly, the present criminal revision petition is disposed of in the above said terms.

Since the main case has been decided, pending miscellaneous applications are rendered infructuous and are disposed of as such.

(VIKAS BAHL)
JUDGE

November 17, 2021
Davinder Kumar

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