

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-S-2457-SBA-2006

Date of Decision: 01.09.2022

State of Punjab

... Appellant

VS.

Shankar Singh & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. JP Ratra, Sr.DAG Punjab for the appellant
None for respondents

Sandeep Moudgil, J. (Oral)

This appeal is directed against the judgment dated 31.08.2005 passed by the learned Sessions Judge, Hoshiarpur (in short 'the appellate court') vide which judgment and order dated 28.01.2005 passed by learned Additional Chief Judicial Magistrate, Hoshiarpur (for short, 'the trial court') has been set aside and the respondents were acquitted of the charges framed against them.

Prosecution case is that a complaint was lodged by Kabal Singh (complainant) that he wanted to go abroad for earning his livelihood. On coming to know this, respondents along with Subhash @ Titu, who were allegedly running travel agency, approached the complainant and offered to send him abroad and manage work permit for him for three years in Korea with salary of Rs.35,000/-. A demand of Rs.2.5 lakh was made by the respondents which they received from the complainant and his brother. Firstly, the complainant paid Rs.1,05,000/- to Shankar Singh, thereafter on 17.12.1997, complainant's brother paid Rs.1 lakh to Shankar Singh as at that time the complainant was in Thailand and was taken there by Titu along with other persons where the complainant stayed for one month and four days.

Thereafter, entry visa was arranged and the complainant was sent to South Korea, where he stayed for one and a half month as the return ticket was upto 03.03.1998 as no job was arranged for him. On coming back, the complainant demanded Rs.2,05,000/- from the respondents but they put off the complainant's demand and even threatened the complainant of dire consequence. Consequently, FIR No.62 dated 06.06.1999 under Section 420 IPC was registered at Police Station Haryana, District Hoshiarpur. The case was tried before learned Additional Chief Judicial Magistrate, Hoshiarpur who vide judgment and order dated 28.01.2005 held that the accused persons had cheated Kabal Singh complainant and accordingly, convicted and sentenced the respondents to undergo RI for one year and to pay a fine of Rs.500/- each for the commission of offence under Section 420 IPC. Aggrieved against conviction, the respondents preferred appeal before the Sessions Court, Hoshiarpur, and the learned Sessions Judge, vide order dated 31.08.2005 accepted the appeal of the respondents holding that the prosecution has not been able to establish its case under Section 420 IPC against the respondents and consequently, the judgment of the learned trial court dated 28.01.2005, was set aside and the respondents were discharged.

Now the State of Punjab, being aggrieved by the appellate order, has approached this Court by way of filing application for leave to appeal which was allowed by this Court vide order dated 04.12.2006 while admitting the appeal which was registered as CRA-S-2457-SBA-2006.

No one has put in appearance on behalf of the respondents.

I have heard learned counsel for the appellant/State and gone through the case file and I find that there is no infirmity in the judgment passed by the learned Sessions Judge.

Record shows that prosecution during trial examined as many as 6 witnesses and to substantiate the charges leveled against the respondents. Statement of the respondents were recorded under Section 313 CrPC wherein they denied the allegations. So much so, in a special enquiry, the respondents were found innocent. In their defence, 2 witnesses were examined by the respondents.

Learned appellate Court considered the following points for adjudication of the case:-

- (i) Whether the present respondents were found innocent in an enquiry conducted by the police;
- (ii) Whether the present respondents are travel agents or are running any travel agency;
- (iii) Whether the mens rea or guilty intention to cheat the complainant is missing in this case on the part of the respondents;
- (iv) Whether the case is based on the statements of interested witnesses and the same are contradictory and discrepant;
- (v) Whether from the admission made by the complainant and the witnesses examined by the prosecution, no offence is made out against any of the respondents;
- (vi) Whether the case is of civil nature and does not constitute any offence under section 420 IPC against any of the respondents?

Firstly, in an enquiry conducted by the SHO, PS Garhdiwala, on an application moved by the complainant, statements of the witnesses were recorded and as per the report duly signed by DSP, Dasuya, the complaint filed by Kabal Singh was found to be false. However, even after conducting enquiry for second time, the present FIR was lodged by obtaining opinion from District Attorney in haste. Learned appellate court has rightly drawn adverse inference since material fact of conducting of enquiry twice does not find mention in the complaint moved by the complainant. Thus, the prosecution has not been able to prove the guilt of the respondents.

Secondly, on the question whether the respondents are running any travel agency, learned appellate Court has returned a finding that Shanker Singh is a Govt. employee, Onkar Singh is an agriculturist and Kartar Devi, who is 55 years old, is a widow. The complainant has himself admitted that the respondents are not connected with any travel agency nor are they working as travel agents or are having any such office. PW4 Nirmal Singh and PW5 Amrik Singh have also deposed to the same effect in their cross-examination. Thus, learned appellate Court has rightly held that none of the respondents are travel agent on the basis of the admission made by the complainant himself.

The contention of the State that an amount of Rs.2,05,000/- was received by Shanker Singh is without any basis, as no document has been produced by the complainant to prove that actually any such transaction took place.

Thirdly, in order to constitute an offence under Section 420 IPC, the ingredients of cheating, the intention to deceive should be in existence at

the time when inducement was offered. In the present case, learned appellate Court has returned a finding that the complainant was keen for going abroad and in that regard, he was sent to Thailand and from there to Korea wherefrom he voluntarily returned to India may be due to weather conditions. It is an admitted case that it was Subhash @ Titu who arranged complainant's visit to Thailand and Korea. The allegation of the complainant is that the accused persons were to send the complainant abroad and arrange work permit. The complainant went to Thailand and then to Korea and then he voluntarily returned to India. This Court is unable to understand, if at all the respondents were travel agents, even then no mens rea can be attributed to the respondents since the complainant was sent abroad but voluntarily came back to India. Moreso, the learned appellate Court is right in observing that if any fraud was committed, that might have been committed by Subhash Chander @ Titu and has thus, rightly returned finding in favour of the respondents.

The contention of the State that false inducement was made by the respondents for sending the complainant abroad needs to be brushed aside solely for the reason that it has been established in the light of specific admission by the complainant and other PWs that the respondents are neither the travel agent nor are they running any office of travel agency. Moreso, it has nowhere been proved that the respondents were having any say in foreign country or they were having any such permit to arrange work permit from foreign country.

Fourthly, the complainant in his cross-examination as PW1, admitted the involvement of only Subhash Chander @ Titu as the said person who kept him in Thailand and in Korea and did not apply for extension of

visa. He also admitted that he was not deported by the South Korean Govt. and came to India at his own sweet will. The said statement is, however, in contradiction to what has been deposed by real brother of the complainant PW4 Nirmal Singh, who stated that the complainant was deported by the Govt. of Korea and he reached the village in second month of the year 2000. Even the statement made by PW5 Amrik Singh, the brother-in-law of the complainant does not inspire any confidence as during his cross-examination he admitted that he cannot tell the date and place when his statement was recorded and that he does not remember as to what was stated by him before the Police. Learned appellate Court, in the absence of any independent corroboration, has rightly answered point No.(iv) & (v) in favour of the respondents.

Lastly, learned appellate court has observed that a suit for recovery of Rs.2,66,500/- has been filed bearing **Civil Suit No.427/2000 'Kabal Sihnggh vs. Subhash Chander'** (Ex.D1) has been filed by the complainant. In the said suit, primarily the allegations are against Subhash Chander @ Titu who was declared as PO at that time. The said suit was dismissed in default since it was filed on false grounds. Learned appellate court has rightly held that the civil remedy was available to the complainant which he did avail, but, for the reasons better known to him, did not pursue the same.

For the reasons aforestated, I do not find any legal infirmity and illegality in the judgment passed by the learned Sessions Judge, Hoshiarpur dated 31.08.2005 allowing the appeal and acquitting the respondents of the charges framed against them. The present appeal is, accordingly, dismissed.

It needs to be mentioned here that the appellant-State has decided to file an appeal on 17.11.2005 against the judgment of the Sessions Court dated 31.08.2005. Apparently, the appeal has been filed without considering the findings of the learned appellate court, in a mechanical manner just to pile up the litigation. The State, unlike other litigant, is not expected to enter into or encourage unnecessary litigation. Thus, I feel that such practice of the State needs to be deprecated. Accordingly, a cost of Rs.25,000/- is imposed on the appellant-State to be deposited in High Court Employees' Welfare Fund, within one week from the date of passing of this order.

01.09.2022

V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No