

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

CRR-1553-2021 (O&M)

Reserved on: 21.03.2022

Pronounced on: 25.04.2022

Ram Devi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:-HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Abhinav Aggarwal,
Advocate for the petitioner.

VINOD S. BHARDWAJ J.

The present revision petition has been filed against the judgment dated 23.02.2018 passed by the Judicial Magistrate Ist Class, Panipat, in criminal case CIS No. 4987 of 2013 arising out of FIR No. 1216 dated 28.09.2012 registered at Police Station City, District Panipat for offences under Section 420 and 120-B of the Indian Penal Code (hereinafter referred to as 'IPC') whereby the petitioner was convicted and was sentenced to undergo rigorous imprisonment for a period of 2 years and a fine of Rs. 2,000/- for offence under Section 420 IPC and to undergo an imprisonment for a period of 1 year and a fine of Rs. 2,000/- for the offence punishable under Section 120-B IPC. The appeal preferred by the petitioner against the said judgment of conviction was dismissed by the Additional Sessions Judge, Panipat vide judgment dated 23.09.2021. Hence, the present petition.

2. Briefly summarized, the facts of the case are that a complaint was submitted by the complainant Sachin Verma son of Mohender Verma on 28.09.2012 to the SHO, Police Station City, Panipat, alleging therein that at

about 2:15 PM, Co-accused Shamsher and one middle aged woman namely Ram Devi came to his shop. Co-accused Shamsher had placed an order for two gold chains, two gold necklaces, two gold mangalsutras, two gold nose pins, two gold naths, six pairs of small ear rings, four women rings, four men rings, two pair of ear tops, two pair of another ear rings. On the date of incident, both the accused had come to the shop to take delivery of the ornaments. Co-accused Shamsher asked the petitioner Ram Devi to take delivery of the gold ornaments. He also showed a brief case to the complainant and claimed that a sum of Rs. 4,80,000/- was being carried in the said briefcase. Co-accused Shamsher Singh took the parcel of ornaments and went outside the shop after handing over the briefcase to Ram Devi. He thereafter ran away on a motorcycle. When the complainant asked Ram Devi to make payment, she told that the amount of Rs. 4,80,000/- was lying in the briefcase. The same was thereafter opened and it was found that there were 8 parcels of Rs. 100/- notes. Each packet had one note of Rs. 100/- at the top and the rest were paper cuttings, likewise there were 4 packets of Rs. 500/- notes and 2 packets of Rs. 1000/- notes. On the top of every packet there was one currency note of respective denomination and the rest were cuttings of the plain paper.

3. On the basis of the above complaint, FIR was registered and investigation was conducted. The petitioner Ram Devi was arrested on 28.09.2012 and thereafter co-accused Shamsher was also arrested on 31.12.2012. The motorcycle as well as some part of the jewellery was also recovered. Upon completion of the investigation, a final report under Section 173 of the Code of Criminal Procedure (hereinafter referred to as

'Cr.P.C.') was filed. Prosecution examined as many as 5 witnesses to prove the case against the accused persons. The details of the same are as follows:

ASI Rajender Singh	PW1
HC Pushpender Singh	PW2
Ct. Surender Singh	PW3
Sachin Verma	PW4
ASI Krishan Kumar	PW5

The Prosecution also relied upon the following documents, which are as under:-

Ex. PW3/A	Complaint to Police
Ex. PW3/E	Disclosure Statement
Ex. PW3/A	Disclosure Statement
Ex. PW3/B	Recovery memo
Ex. PW3/D	Recovery memo
Ex. PW3/C	Recovery memo
Ex. PW3/F	Recovery memo
Ex. PW1/D	Statement of accused
Ex. PW1/E	Statement
Ex. P1 to P4	Ex. P14 Recovery memo of ornaments
Ex. PW1/C	Signature of accused persons
Ex. PW1/B	FIR
Ex. P1	Bill
Ex. P2	Superdaginama

The statement of the accused persons was thereafter recorded under Section 313 Cr.P.C. and the entire evidence was put to them to which they pleaded not guilty and claimed false implication. The petitioner, however, chose not to lead any evidence in defence.

4. After consideration of the rival submissions advanced by the parties, the trial Court came to the conclusion that the charge against the

petitioner as well as the co-accused stood fully established and accordingly, convicted the petitioner and co-accused. Aggrieved thereof, appeal was filed before the Court of Sessions Judge, Panipat, however, vide judgment dated 23.09.2021, the said appeal was also dismissed. Hence, the present petition.

5. Learned counsel appearing on behalf of the petitioner has argued that there was no evidence to establish that the petitioner was in conspiracy with co-accused Shamsheer as she cannot be deemed to be aware of the contents of the said briefcase which was carried by Shamsheer Singh. It is further argued that no independent witness had been joined by the prosecution and that there is no reason as to why the complainant would have prepared any gold ornaments without taking any advance. It is further pointed out that there was no CCTV camera installed in the shop and the prosecution has not produced any serial number of the original currency notes that were claimed to be present in the brief-case on the top of the bundle, so prepared and kept.

6. He has further placed reliance on the judgment this Court passed in the matter of *Rajwinder and Another Vs. State of Punjab reported as 2019 (2)R.C.R. (Criminal) 912*, to claim that the petitioner has been sentenced to a period of less than 7 years and that there is no previous conviction of the petitioner. Besides this, she is a middle aged woman and is thus, entitled to be released on probation. Further, reliance was also placed on the judgment of *Dashrath Lal Chandu Lal Joshi Vs. State of Gujarat passed in Criminal Appeal No. 141 of 1973 decided on 18th January 1979*, wherein the accused was taken in confidence and had no knowledge that the receipts in question were forged. The accused had merely accompanied the

co-accused for collecting donations. The conviction in the said case was set aside. A further reference was made to the judgment of ***Om Parkash and Others Vs. State of Haryana passed in Criminal Appeal No. 1276 of 1999 decided on 29.11.1999*** to claim benefit of probation.

7. I have considered the submissions advanced by the learned counsel appearing on behalf of the petitioner. The argument of the petitioner that she was not aware of the contents of the briefcase or that the bundle of packets did not contain currency is misconceived. The surrounding circumstances do not in any manner suggest that the petitioner was reeling under any bona fide impression. The factual aspect as regards the circumstances under which the petitioner accompanied co-accused Shamsher Singh is for the petitioner to dispel. The circumstances however suggest to the contrary. The petitioner not only accompanied the co-accused, but also played an active part. She asked for jewellery to be handed over quickly, took the brief case with her to give an impression that money is kept by her and she allowed co-accused Shamsher Singh to escape. The facts, rather reflect that she was aware of the plan and had consensually participated in the same. Furthermore, no circumstance has been pointed out by the petitioner as to how and under what circumstances did the petitioner accompany co-accused Shamsher Singh and what were the reasons as to why she accompanied or agreed to accompany co-accused Shamsher to collect the ornaments in question. The involvement of the petitioner in the commission of the offence is active and had it not been for the petitioner who was sitting in the shop when co-accused Shamsher left the jewellery shop, the complainant would not have allowed co-accused Shamsher to

leave the shop. It is, thus, duly established by the prosecution that the petitioner played an active part in the commission of the offence. She cannot thus be perceived as an innocent victim who had acted under a bona fide impression.

8. Besides, the arguments in question are in the nature of re-appreciation of the merits of the case. The revisional jurisdiction of the High Court under Section 401 Cr.P.C. is limited to the extent of illegality or perversity in the judgment passed by the courts below. In the event that opinion of the courts below is a possible opinion upon appreciation of the evidence, such opinion of the courts below cannot be substituted by the revisional Court merely because another view may also be possible. The revisional Court does not sit in re-appreciation of the entire evidence. Unless there are explicit circumstances as would reflect the perversity, illegality, infirmity or procedural impropriety by the courts below is established that the conclusion drawn by the courts below is based upon mis-appreciation of the evidence and non-consideration of the relevant testimonies/evidence, such judgment is not to be upset by the Court in exercise of its revisional jurisdiction.

9. The same now leads to the argument as to whether the petitioner is entitled for concession to be released on probation. The learned counsel for the petitioner contended that the petitioner is a first time offender and does not have criminal antecedents. She has also been punished for a period of less than 7 years, and so it is contended that she be released on probation.

10. As per copy of the Aadhar Card appended along with the instant

petition, date of birth of the petitioner has been stated as 10.08.1972. Hence, the petitioner is around 50 years of age now. It is thus erroneously recorded in the order of the Judicial Magistrate Ist Class Panipat that she was about 60 years of age as on 23.02.2018. Further, the offence in question was committed in September 2012, when the petitioner was around 40 years of age. Being in such age group, she was required to display regard to the rule of law and not indulge in criminal activities herself. Ordinarily the benefit of probation should be granted while noticing the following circumstances:-

- (i) The nature and gravity of offence.
 - (ii) The manner in which such an offence is committed and whether the same reflects a criminal mind in play.
 - (iii) The age of the convict and his/her social circumstances.
 - (iv) The assessment of a possibility of reform of a convict.
 - (v) Whether the offence has larger social ramifications and exercise of discretion is likely to shock conscience of the society.
 - (vi) The mitigating circumstances surrounding an accused/convict.
 - (vii) The antecedents of the convict.
 - (viii) Whether the release on probation defeats the fixed balance to be maintained in sentencing and reflects law to be standing next to an offender.
 - (ix) The signal which exercise of probation is likely to send.
- It must not instigate people to indulge in committing crime and should rather be a deterrent as well.

(x) Whether the Court has already exercised its discretion in imposing sentence and has considered all surrounding circumstances.

(xi) Any exceptional circumstances that would necessitate exercise of such jurisdiction to the satisfaction of judicial conscience.

Considering the circumstances noticed above and the conduct of the petitioner and her role in commission of the offence, I am of the opinion that the petitioner's claim for probation deserves to be rejected.

11. Instead of opting to abide by law, the petitioner chose to conspire with the co-accused to commit the offence. Probation is not a matter of right and claim for the same has to be seen in the totality of circumstances. It would be a different situation where a person happens to be on the wrong side of law by sheer chance or under circumstances beyond his/her control. However, such a situation would be entirely different when an accused has planned to commit an offence. The same is reflective of a criminal mindset and not just commission of a crime at a given moment of time. The philosophy of penology would mandate that the Court has to strike a balance between the offence committed by an accused as also the proportion of punishment so imposed. The sentence awarded to the petitioner is for a short duration of 2 years which cannot be regarded as harsh. Any further leniency in the matter is likely to send wrong signals to the society and is likely to instigate people to take a chance at commission of crime. The case of the petitioner shows a pre-meditation to commit a crime and it is not a case where a person happens to be on a wrong side of law. It cannot also be

held that the petitioner could not have understood the culpability or consequences of her acts. Being at a mature age, she was expected to show maturity in her acts. Law cannot be seen to be standing next to persons, who reflect a criminal mindset and are displaying manipulations of the legal systems. They cannot be kept at par with the persons who happen to commit crime under peculiar circumstances but do not reflect a trait of criminality. Punishment imposed must have a deterrent effect as well. All the mitigating circumstances have already been taken into consideration by the learned Judicial Magistrate First Class, Panipat while imposing sentence. No sufficient grounds exist for extending the benefit of probation.

12. The present petition is accordingly dismissed.

25.04.2022

Ajay Goswami

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No