

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

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**CRR-762-2019 (O&M)
Date of decision: 25.05.2023**

Phool Singh Khileri and another

....Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gunjan Mehta, Advocate for the petitioners

Mr. Praveen Bhadu, AAG, Haryana

Mr. B. S. Beniwal, Advocate for the complainant

AMAN CHAUDHARY. J.

1. The present revision petition has been preferred against the judgment of conviction dated 03.05.2014 and order of sentence dated 06.05.2014 passed by the learned Chief Judicial Magistrate, Fatehabad, whereby petitioners have been convicted under Sections 420 and 120-B IPC.

2. Briefly put, the facts of the case are that on 25.04.2010, accused-Phool Singh, called complainant-Molu Ram at his house, where the other co-accused, Kuldeep and two, Kamlesh and Sukhdev were already present. The accused promised him that his son would get a T.C. job in the Railway Department, for this, he will have to pay Rs.7 lakh, half of which was paid in advance. On 22.05.2010, the complainant visited his house again where all the

four accused were present and he handed over Rs.3.5 lakh to the accused Phool Singh. Again on 07.06.2010, accused Phool Singh called the complainant to collect the call letter of his son Raj Kumar from Sukhdev and also bring the remaining amount of Rs.3.5 lakh alongwith domicile, other certificates and DMC of 12th class. Upon this, the complainant reached the house of accused and handed over the money and documents to the three persons, who handed over a document to him and stated that send Raj Kumar (son of the complainant) with this call letter to Patna, where he will be given training. When with the said letter, son of the complainant went to Patna and approached the Railway Official, they said, it was not issued by their office as there was no vacancy of the post of TC in their Department. Since, the accused did not arrange any job and return the amount, the complainant, on the basis of the said facts, lodged an FIR No.113 dated 20.03.2012, under Sections 420, 467, 468, 471, 120B IPC at Police Station City Fatehabad, against the petitioners and other co-accused. After investigation, final report under Section 173 CrPC was submitted before the Court.

3. The accused-petitioners were charge sheeted by the trial Court for the offence punishable under Sections 420, 467, 468, 471 and 120-B of IPC, to which they pleaded not guilty and claimed trial.

4. To bring home guilt against the accused, the prosecution examined as many as 23 prosecution witnesses. On closure of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. All the incriminating material was put to them which was denied. In defence, no witness was examined by them.

5. On scrutinizing the evidence and hearing the learned counsel for the parties, the learned trial Court came to the conclusion that the prosecution had proved its case, bringing home guilt against accused-petitioners and they were convicted and sentenced as noticed above.

6. Aggrieved petitioners had filed an appeal, which was dismissed by the learned Additional Sessions Judge, Fatehabad vide impugned judgment dated 07.03.2019.

7. Hence, the present revision petition.

8. Learned counsel, at the very outset, submits that the petitioners do not wish to challenge the conviction but confines the prayer to the quantum of sentence to reduce the period already undergone by them as during the pendency of the present revision petition, the matter stands compromised and the amount as per the settlement has been returned to the complainant. He further submits that petitioner No. 1 is 62 years of age, a heart patient and has no source of income, whereas petitioner No. 2 is 34 years of age and has 3 children, out of which one daughter is 2 and a half year old and he is the sole bread-winner of the family. They are the first offender and have undergone about 01 year 06 months each, out of the total substantive sentence of 2 years each awarded by the trial Court.

9. Learned counsel for the complainant affirms the factum of compromise and states that he has no objection, if the prayer made by the petitioner is allowed.

10. On the other hand, learned State counsel submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted

and sentenced the petitioners, therefore, he prays for the dismissal of the present petition.

11. Heard the learned counsel for the parties and gone through the record with their able assistance.

12. Though, the petitioners have given up their challenge to the conviction and prayed for reduction of their sentence as having undergone, in view of the mitigation circumstances as mentioned above. However, this Court still deems it appropriate to examine the judgment of the Courts below. The learned trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the petitioners as the per the statements of PW4 Amit Kumar, PW7 Poonam Chand, PW12 Naveen Kumar, PW13 Jagdish, PW14 Satpal and PW21 Rohtak, the accused had deceived heavy amounts from them under misrepresentation that they can arrange for appointments in various department and likewise, the complainant PW5 Molu Ram, they committed a job in the Railway Department in lieu of a sum of Rs.7 lakh, given by the complainant. PW20, ASI Om Prakash also deposed that during investigation, he collected the details of various accounts of the accused, the fake call letters issued for appointments, recovered cell phones and amounts from the accused. The bank statements of the appellants showing multiple transfers of heavy cash amount, for which no reasonable explanation was given as also transfers being made to another co-accused, namely Deepak Kalita, whose involvement was admitted in the deposition. The trial Court had rightly held the accused guilty under Section 420 IPC read with Section 120-B IPC. Learned

Additional Sessions Judge in appeal filed by the petitioners had also considered all aspects of the matter and only thereafter, upheld the judgment of the conviction and order passed by the learned trial Court. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioners as referred to above and there is no scope for interference in the concurrent findings recorded by both the Courts below. As such, the conviction of the petitioners is affirmed.

13. Regarding the prayer of the learned counsel for the petitioners that in view of the aforestated mitigating circumstances, the sentence of the petitioners may be reduced to the period already undergone, it is apposite to make a reference to the judgment of Hon'ble The Supreme Court of India in the case of **Haripada Das vs. State of W.B.** (1998) 9 SCC 678, wherein it was held as under:

“....considering the fact that the respondent had already undergone detention for some period and the case is pending for a pretty long time for which he had suffered both financial hardship and mental agony and also considering the fact that he had been released on bail as far back as on 17-1-1986, we feel that the ends of justice will be met in the facts of the case if the sentence is reduced to the period already undergone....”

14. The observations as relevant to the present case, made by Hon'ble The Supreme Court in the case of **R.Soundarajan vs. Seed Inspector, Coimbatore and another**, 2006(4) RCR (Crl.) 645 read thus:-

"26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court

during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment."

15. It is trite that each case is to be decided on its own peculiar facts and circumstances.

16. During the pendency of the present revision petition, a compromise has been arrived at between the parties and as per the compromise/settlement dated 16.03.2023, a total amount of Rs.5,50,000/- was to be paid to the complainant, out of which a demand draft dated 13.04.2023 amounting to Rs. 2 lakh was handed over to the complainant-respondent on 17.04.2023 and demand draft No. 127853 dated 20.05.2023 of Rs.3.5 lakh was handed over.

17. Keeping in view the mitigating circumstances as brought out by the learned counsel for the petitioner in the present case, inasmuch as petitioner No. 1, who is an aged person, suffering from heart ailment, has no source of income, whereas, petitioner No. 2 is a middle-aged, having 3 children to take care of and the sole bread-winner of the family, a compromise has taken place between the parties and the amount settled already paid in full and final, the petitioners are facing the mental agony of trial for the last 11 years, since then a sword of conviction has been persistently hanging over their heads and they have already suffered a major part of their substantive sentence awarded to them. The ends of justice would adequately be met if the sentence of the petitioners is ordered to be reduced from 2 years sentence awarded to the period already undergone by them i.e. 1 year and 6 months each.

18. Accordingly, while upholding the conviction of the petitioners in the

criminal revision petition, the sentence is ordered to be reduced to the period already undergone by petitioners. Fine shall remain intact.

19. With the above modification in the order of sentence dated 06.05.2014 passed by the learned Chief Judicial Magistrate, Fatehabad, as noted above, the criminal revision petition is partly allowed.

(AMAN CHAUDHARY)
JUDGE

25.05.2023
Mehak

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