

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

CRR-1019-2022 (O&M)
Date of Decision: 06.01.2023

HARBANS

...Petitioner

Versus

STATE OF U.T. CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Pardeep Kumar, Advocate
for the petitioner.

Mr. Charanjit Singh Bakshi, APP., U.T., Chandigarh.

HARSH BUNGER, J.

Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 10.07.2017 passed by the learned Judicial Magistrate 1st Class, Chandigarh, whereby, the petitioner has been convicted under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code (for short 'IPC') registered at Police Station, Sector 17, Chandigarh. Challenge is also to the judgment dated 14.03.2022 passed by the Additional Sessions Judge, Chandigarh vide which the appeal filed by the present petitioner was dismissed and the sentence imposed upon him was upheld.

Briefly stated, the prosecution case is that in the year 2012, in the Court of learned Judicial Magistrate First Class, Chandigarh, petitioner herein while appearing as surety for the accused in the complaint titled as M/s Venky Limited versus Vinod Salaria under Section 138 of the Negotiable Instruments Act impersonated as Manish Kumar s/o Krishan Kumar and placed on record the forged and fabricated copies of

registration certificate of the vehicle Indica Car bearing No.PB12-H-0775 and driving licence with an intention to commit cheating and while appearing as surety furnished the bail bonds in which he used the above said forged documents as genuine and committed cheating to the complainant and the registration authority, U.T., Chandigarh.

The trial Court framed the following points of determination:-

- 1) *Whether in the year 2012, in the court of Sh. Parinder Singh, Ld. JMIC, Chandigarh, accused while appearing as surety for the accused in the complaint titled as M/s Venky Limited versus Vinod Salaria u/s 138 of the Negotiable Instrument Act impersonated as Manish Kumar s/o Krishan Kumar and thereby committed an offence punishable u/s 419 of the Indian Penal Code ?*
- 2) *Whether on the above said time and place, accused forged the Registration Certificate of the vehicle of Indica Car No.PB12H0775 and driving licence and thereby committed an offence punishable u/s 467 of the Indian Penal Code ?*
- 3) *Whether on the above said time and place, accused committed the forgery of the above said documents with an intention to commit cheating and thereby committed an offence punishable u/s 468 of the Indian Penal Code ?*
- 4) *Whether on the above said time and place, accused while appearing as surety furnished the bail bonds in which accused used the above said forged documents as genuine and thereby committed an offence punishable u/s 471 of the Indian Penal code ?*
- 5) *Whether on the above said time and place, accused committed cheating to the complainant and the registration authority, UT, Chandigarh, while doing so, committed an offence punishable u/s 420 of the Indian Penal Code ?*
- 6) *Conclusion.*

The learned trial Court returned the following findings :-

“12. To prove the case, prosecution has examined complainant Sh. Parinder Singh, Ld. Chief Judicial Magistrate cum Secretary, DLSA as PW10, who reiterated the entire story put forth by the prosecution and who categorically stated that accused while appearing as surety for the accused in the complaint titled as M/s Venky Ltd. Versus Vinod Salaria u/s 138 of

the Negotiable Instrument Act, impersonated as Manish Kumar s/o Krishan Kumkar r/o H.No.541, Phase-1, Mohali, Punjab and furnished bail/surety bonds while placing on record forged and fabricated certified copy of Registration Certificate of vehicle i.e. Indica Car bearing registration no.PB12H0775 and for identification, he placed on record photocopy of his Driving Licence, which were got verified from the District Transport Officer, Rupnagar and same were found forged and fabricated. Similarly, both the Investigating Officers SI Sarti Roy and SI Manjit Singh have been examined as PW7 and PW2 respectively. Investigating Officer SI Manjit Singh PW2 has specifically proved the possession memo of original bail/surety bonds, affidavit, Driving Licence and Registration Certificate as Ex.PW2/B, disclosure statement of accused as Ex PW2/C and verification report of the above said documents from the office of District Transport Officer, Rupnagar as Ex.PW2/D and screening report of Driving Licence as Ex PW1/A as well as CFLS report on the file. Further, Tarlochan Singh, Steno, DTO Office, Ropar has been examined as PW3, who had proved verification report of DTO Office, Rupnagar regarding genuineness of the registration certificate of above said vehicle and driving licence of the accused as Ex PW2/D. Further PW6 R.S. Rana, Assistant Director and Scientist, CFSL Shimla was examined, who proved CFSL Report as Ex PW5/A, and specifically stated that the documents of this case were referred by the SSP, UT, Chandigarh vide letter bearing no.34904/UT/E-6 dated 17.07.2013 in a sealed cover and consisted of questioned documents mark Q1 to Q10 which includes bail/surety bonds Ex PW6/1, affidavit Ex.PW6/2, photocopies of Driving licence of accused as Ex PW6/3 to PW6/7 and specimen writings/signatures marks S1 to S13 purported to be of accused which includes Ex PW6/8 to

Ex PW6/20. After going through and careful examination of documents, he expressed his opinion number DOC/CX-2025/2013 dated 22.08.2013 Ex PW6/21 along with detailed reasons for his opinion. Further, as per CFLS report, the signature of accused put on the bail bonds/surety bonds furnished before the above said learned court while mentioning the name of Manish Kumar s/o Krishan Kumar and specimen signatures of accused were found made by one and same person i.e. present accused. Similarly, Ravi Dutt, Clerk, DTO Office, Rupnagar had been examined as PW8, who proved certified copy of driving licence bearing no.936/RDL99-2k in the name of Harkaran Singh s/o Parihar Singh r/o Kishanpura District Rupnagar as Ex PW8/1. Perusal of the statements of these witnesses, it is duly proved on the file as accused while impersonating as Manish Kumar s/o Krishan Kumar r/o H.No.541, Phase-I, Mohali, Punjab, instead of his present identity and name i.e. Harbans Lal s/o Ranga Ram r/o Village Gurra, Police Station Mullapur, Mohali, Punjab appeared before the Id. Court of Sh. Parinder Singh, Judicial Magistrate Ist Class, Chandigarh in a complaint u/s 138 of the Negotiable Instrument Act titled as M/s Venky Ltd versus Vinod Salaria in order to establish his ability to meet amount of bail/surety bonds and he placed on record copy of registration certificate of vehicle i.e. Indica Car bearing registration no.PB12H0775 and for his identification, he had placed on record driving licence which were found forged and fabricated. These facts are also supported by verification report of District Transport Office, Rupnagar Ex PW2/D as per which, the actual said registration certificate was allotted to the motorcycle mark Hero Honda bearing chasis no.04J09C00964 & Engine no.04J08M01133, which was owned by one Harpreet Singh s/o Balvir Singh r/o H.No.2891, Nehru Nagar,

Rupnagar, District Rupnagar, Punjab. Further as per verification record of driving licence no.936/R/RDL-99-2K dated 25.04.1999 made at District Transport, Rupnagar, Punjab and proved by dealing clerk namely Kuldeep Singh, above said driving licence was registered in the name of Harkaran Singh s/o Pritam Singh for motorcycle & LTV and date of issue of the same was 01.06.1999 valid up to 31.05.2002. In view of the discussion made above, it is crystal clear that the accused furnished the forged and fabricated copy of Registration Certificate of vehicle i.e. Indica Car bearing no.PB12H0775 and for his identification, of his driving licence, while impersonating himself as Manish Kumar s/o Krishan Kumar r/o 541, Phase-I, Mohali in the complaint u/s 138 of the Negotiable Instrument Act titled as M/s Venky Limited vs Vinod Salaria pending before the then ld. Court of Sh. Parinder Singh, Judicial Magistrate Ist Class, Chandigarh.”

Vide judgment dated 10.07.2017, the learned Judicial Magistrate 1st Class, Chandigarh convicted and sentenced the petitioner for offences under Sections 419, 420, 467, 468 and 471 IPC registered at Police Station Sector 17, Chandigarh.

The learned Additional Sessions Judge, Chandigarh vide its judgment dated 14.03.2022 dismissed the appeal filed against judgment dated 10.07.2017 passed by the Judicial Magistrate Ist Class, Chandigarh, by the present petitioner and the sentence imposed upon him was upheld.

Accordingly, the petitioner filed the present revision petition before this Court.

At the very outset, learned counsel for the petitioner, on instructions, stated that he does not propose to challenge the impugned

judgment and order on its merits. He, however, prayed for modification of the order of sentence for the period already undergone by the petitioner.

In this regard, it has been submitted that the FIR for the occurrence was lodged on 02.05.2012 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that the petitioner is about 42 years of age and is the sole bread winner of his family. It is submitted that the son of the petitioner is suffering from serious health problem i.e. hole in heart, who is undergoing treatment and cannot perform his daily chores and suffers disability to the extent of 90 per cent. It is further submitted that as per the custody certificate dated 23.12.2022 (which is taken on record), the petitioner has already undergone total sentence (excluding parole) of 09 months and 22 days. It is stated that the petitioner is not involved in any other case.

On the other hand, learned counsel for U.T. Chandigarh 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, learned counsel for Union Territory, Chandigarh has not disputed the fact with respect to the custody of the petitioner. While referring to an application signed by Deputy Superintendent of Police, Central, U.T., Chandigarh and also a report of Civil Surgeon, SAS Nagar; he submitted that the certificate regarding son of the petitioner, who is stated to be suffering “Intellectual disability of 90%” has been verified to be true.

I have heard learned counsel for the parties and perused the entire material available on record, as well as judgement of the trial Court and lower Appellate Court.

Perusal of the judgments passed by the learned Courts below shows that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Sections 419, 420, 467, 468 and 471 IPC and the Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioner has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioner is upheld.

Vide order dated 10.07.2017 passed by the learned Judicial Magistrate 1st Class, Chandigarh, the petitioner has been sentenced as under:-

<i>Sr. No.</i>	<i>Offence under Section</i>	<i>Punishment</i>
1	419 of the Indian Penal Code	To undergo rigorous imprisonment for 2 years.
2	420 of the Indian Penal Code	To undergo rigorous imprisonment for 2 years and fine of Rs.500/-. In default of payment of fine, the convict shall undergo simple imprisonment for 2 months.
3	467 of the Indian Penal Code	To undergo rigorous imprisonment for 2 years and fine of Rs.500/-. In default of payment of fine, the convict shall undergo simple imprisonment for 2 months.
4	468 of the Indian Penal Code	To undergo rigorous imprisonment for 2 years and fine of Rs.500/-. In default of payment of fine, the convict shall undergo simple imprisonment for 2 months.
5	471 of the Indian Penal Code	To undergo rigorous imprisonment for 2 years.

It was ordered that all the substantive sentences of imprisonment shall run concurrently.

Before considering the submissions of the counsel for the petitioner on the issue of quantum of sentence, it is apposite to refer to judgment of Hon'ble the Apex Court in ***Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926***, explaining rehabilitary & reformatory aspects in sentencing, whereby, it has been observed as under :-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

In ***Deo Narain Mandal Vs. State of UP 2004(7) SCC 257***, the term "Proper Sentence" was explained by observing that sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the Court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should

be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

In *Shyam Narain vs State (NCT of Delhi)*, 2013(7) SCC 77, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen.

In *Kokaiyabai Yadav vs State of Chhattisgarh* 2017(13) SCC 449, it has been observed that reforming criminals who understand their wrong doing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world, have the capacity of humanising the world.

In *Ravada Sasikala vs. State of A.P.* AIR 2017 SC 1166, the Hon'ble Supreme Court has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm

to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every Court to award proper sentence having regard to nature of offence and manner of its commission. Hon'ble the Apex Court further said that Courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced.

A perusal of the above referred judicial pronouncements would manifest that the criminal justice jurisprudence adopted in the country is not retributive but reformative and corrective.

Considering the above-stated position of law and also the facts and circumstances of this case, since the FIR in question was lodged on 02.05.2012; the petitioner has suffered the agony of trial/appeal/revision for more than 10 years; the petitioner is about 42 years of age and is the sole bread winner of his family and it is not disputed by the learned counsel for Union Territory, Chandigarh that the son of the petitioner is suffering from health problem and disability is to the extent of 90 percent; further as per the custody certificate dated 23.12.2022, the petitioner has already undergone total sentence (excluding parole) of 09 months and 22 days and he is not involved in any other case, accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

Accordingly, the present revision petition is partly allowed. The conviction of the petitioner is upheld. However, the order of sentence dated 10.07.2017 passed by the learned Judicial Magistrate 1st Class, Chandigarh, as upheld by the learned Additional Sessions Judge, Chandigarh vide

judgment dated 14.03.2022 is modified and the sentence of two years rigorous imprisonment awarded to the petitioner is reduced to the period of sentence already undergone by him. The petitioner be released and his bail bonds shall stand discharged.

This petition is disposed of in abovesaid terms.

Pending miscellaneous application/s, if any, shall also stands disposed of, in view of the abovesaid order.

January 6th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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