

Neutral Citation No.

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

Date of Decision: 28.04.2023

1. CRR No.2103 of 2009

Gurcharan Singh

.....Petitioner

Vs.

State of Punjab & another

.....Respondents

2. CRR No.2252 of 2009

Raju @ Ashok Kumar

.....Petitioner

Vs.

**Punjab and Haryana High
Court, Chandigarh & anr.**

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present Mr. Sandeep S. Majithia, Advocate for the petitioners in CRR
No.2103 of 2009.

Mr. Sherry K. Singla, Advocate for the petitioner in CRR
No.2252 of 2009.

Mr. P.S. Pandher, AAG, Punjab.

Mr. Raman Mahajan, Advocate for the complainant.

DEEPAK GUPTA, J.

This order shall dispose of two revision petitions as above, as
both of them are against common judgments of the Courts below.

2. (i) What emerges, on perusal of record, is that Gurcharan Singh
(petitioner of CRR No.2103 of 2009) filed a petition under Section 13 of
the Hindu Marriage Act, 1955 seeking divorce from his wife Smt.
Sukhwinder Kaur before District Judge, Bathinda, on the grounds of cruelty
and by alleging that respondent – Sukhwinder Kaur was indulging in

immoral activities by having sexual relations with a person other than the husband.

(ii) During proceedings of that divorce petition, on the basis of an application moved by petitioner – Gurcharan Singh and on deposit of necessary diet money etc., one ‘Raju alias Ashok Kumar son of Sat Pal son of Chatin Singh’ resident of Maur Mandi was examined as AW2 on 17.04.1997, who supported the case of Gurcharan Singh by making a statement that on a date, when he visited the house of Gurcharan Singh and Sukhwinder Kaur, he found Sukhwinder Kaur in compromising position with a person. He also pleaded that Gurcharan Singh was his real uncle's son. Besides, said Raju alias Ashok, petitioner – Gurcharan Singh examined his mother Smt. Lajwanti as AW3 to support his case and she also testified that Raju is the son of her real brother-in-law (*Devar*). Petitioner – Gurcharan was represented by Shri S.M. Nayyar, Advocate, whereas respondent Sukhwinder Kaur was represented by Shri Abhey Kumar Singla, Advocate.

(iii) On 29.07.1997, father of Smt. Sukhwinder Kaur moved an application before District Judge, Bathinda for recalling AW2 Raju alias Ashok son of Sat Pal alleging impersonation. Despite issuance of summons twice, said Raju alias Ashok son of Sat Pal did not appear. Summons were then issued on the address provided by Sukhwinder Kaur. Raju alias Ashok son of Amar Nath (petitioner of CRM-M-2252 of 2009) appeared in the Court and stated that he had not appeared before the Court as a witness on behalf of Gurcharan Singh as AW2. Shri S.M. Nayyar, Advocate representing the husband- Gurcharan Singh made a statement before the District Judge that he will not rely on the statement of AW2. As it appears that no action was taken by the District Judge, Bathinda regarding

impersonation. Divorce petition was ultimately allowed on 1.4.1998.

3. (i) Wife Smt. Sukhwinder Kaur filed FAO No.107-M of 1998 before this Court against the order dated 01.04.1998 of the District Judge, Bathinda, dissolving the marriage by way of decree of divorce. It is during the proceedings of this FAO that this Court (Hon'ble Mr. Justice Hemant Gupta) vide order dated 05.02.2003, directed the Registrar General of the Punjab and Haryana High Court to lodge appropriate complaint under the relevant provisions of law against accused, i.e. Gurcharan Singh, his mother Lajwanti and the impersonator.

(ii) On the said direction, complaint was filed to prosecute the afore-said accused in the Court of learned Chief Judicial Magistrate, Bathinda under Sections 177, 191, 193, 196, 416 read with Section 419 IPC.

(iii) During trial Rajnish Kumar son of Sat Pal, the actual/ real son of uncle of Gurcharan appeared as CW1 and deposed that he had not appeared as a witness in the petition under Section 13 of the Hindu Marriage Act on 17.04.1997 for dissolution of the marriage in case titled "Gurcharan Singh Vs. Sukhwinder Kaur". After going through the statement made by AW2 Raju alias Ashok in the divorce petition, he stated that the same did not bear his signature. CW2 Jagjit Singh, the father of Sukhwinder Kaur, deposed that he was present in the Court during the recording of the testimony of AW2 Raju alias Ashok in the divorce proceedings and that Gurcharan Singh had produced accused Ashok Kumar as his witness, who impersonated as Ashok son of Sat Pal, though the real name of the father of the accused present in the Court is Chiranji Lal. To the same effect was the statement, which was made by Sukhwinder Kaur, who appeared as CW3. Shri S.M. Nayyar, Advocate examined as CW4 deposed that he was representing Gurcharan Singh in the divorce petition; whereas CW6 Abhey

Kumar Singla, Advocate deposed that he was representing Sukhwinder Kaur in the divorce petition.

(iv) After concluding evidence, statements of three accused were recorded recorded under Section 313 Cr.P.C. Accused Gurcharan Singh pleaded that on the date of examination of AW2 in the divorce petition, he was not present in the Court and so, he cannot say as to whether the witness actually summoned at his request had appeared before the Court or not. Accused Ashok son of Amar Nath stated that he never appeared as a witness in the divorce petition nor had signed any statement. Accused Lajwanti stated that on the date of examination of Raju as AW2, she was not present in the Court and rather, she had appeared as a witness on the next date of hearing and that on the date of her deposition, she was under the impression that her brother-in-law's son, namely, Raju had appeared as AW2. No evidence in defence was adduced.

(v) After hearing both the sides, learned Chief Judicial Magistrate, convicted all the three accused. Accused Raju alias Ashok Kumar son of Amar Nath was convicted under Section 419 and 193 IPC; whereas accused Gurcharan Singh and Lajwanti were convicted under Section 419 / 120-B IPC and Section 177 IPC, vide judgment dated 06.11.2007. Vide order of the same date, they were sentenced as under:-

Offences Punishable	Accused Gurcharan Singh	Accused Lajwanti	Accused Ashok Kumar
U/s 419 IPC	--	--	Rigorous Imprisonment for a period of two years
U/s 419/120-B IPC	Rigorous Imprisonment for a period of two years	Rigorous Imprisonment for a period of two years	--
U/s 193 IPC	--	--	Rigorous Imprisonment for a period of three years.

U/s 177 IPC	Rigorous Imprisonment for a period of six months.	Rigorous Imprisonment for a period of six months.	
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4. Against the above-said judgment of conviction and order of sentence, Gurcharan Singh and his mother Lajwanti filed one appeal; whereas separate appeal was filed by Raju alias Ashok son of Amar Nath. Both appeals were heard together by learned Sessions Judge, Bathinda. Appeal qua Smt. Lajwanti was accepted and she was acquitted of the charges; whereas appeal of Gurcharan Singh and that of Raju alias Ashok son of Amar Nath was dismissed. It is against the afore-said judgments/orders of the Courts below, that these revisions have been filed.

5. On behalf of petitioner – Gurcharan Singh, it is contended that statement of CW2 Jagjit Singh and that of CW3 Sukhwinder Kaur did not carry any weight, as they were not present on 17.04.1997 when the statement of AW2 was recorded during divorce proceedings and so, they have been wrongly relied. Their presence is not even marked in the zimni orders nor they protested orally, what to talk of making a complaint regarding the examination of AW2, in case he was a fake person. Further, CW4 Shri S.M. Nayyar, Advocate and CW6 Abhey Kumar Singla, Advocate were not examined regarding identification of witness as to whether CW4 had examined AW2 Raju alias Ashok and whether that fake person had been cross-examined by CW6. It is contended that prosecution failed to prove its case but the Courts below awarded the sentence by wrongly observing that decree of divorce was obtained by producing fake person.

6. On behalf of petitioner Raju alias Ashok son of Amar Nath, it is contended that when AW2 was examined during divorce proceedings, he was cross-examined by the counsel in the presence of Smt. Sukhwinder

Kaur and her father Jagjit Singh on 17.04.1997, despite which they did not raise any dispute regarding the identity of the person who appeared as AW2 and that for the first time on 29.07.1997, i.e. after more than three months that father of Sukhwinder Kaur moved a complaint before District and Sessions Judge, Bathinda for recalling the witness on the ground of impersonation. It is contended further that although statement was made by Advocate for Gurcharan Singh that he will not rely upon the statement of AW2 but still no complaint regarding impersonation was made by District Judge. Further, no inquiry was also made in terms of Section 195 Cr.P.C and Section 340 Cr.P.C, which is mandatory. Relevant case law in this regard has ignored and all this has caused miscarriage of justice. With all these submissions, prayer for setting aside the impugned judgments passed by the Courts below is made with a further request to acquit the convict-petitioner.

7. Learned State Counsel as well as counsel for the complainant supported the impugned judgments.

8. Submissions of Ld. counsels for both the sides have been considered and the record perused carefully.

9. Taking in brief, the allegations are that accused Gurcharan produced accused Raju alias Ashok as a fake person in place of his real cousin to depose in divorce petition against his wife Smt. Sukhwinder Kaur and thus, Raju committed offence under Section 419 IPC; whereas Gurcharan being part of conspiracy committed offence under Section 419/120-B IPC. Another allegations is that having deposed falsely, during judicial proceedings, accused Raju committed offence under Section 193 IPC.

10. After perusing the entire record, I find that more than due to

factual position but due to the legal flaws, the conviction of the accused-appellants cannot be sustained. As per Section 195 of the Code of Criminal Procedure, no Court can take cognizance of an offence punishable under Sections 193 to 196 of the Indian Penal Code (apart from other provisions) when such offences are alleged to have been committed in, or in relation to, any proceeding in any Court, except on a complaint in writing of that Court or by such Officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate.

11. In this case, the false evidence in the divorce proceedings was allegedly given by accused Raju on 17.04.1997 before District Judge, Bathinda, and therefore, there can be no doubt that complaint could have been filed either by the District Judge or his authorised person or by the High Court, as the Court of District Judge is subordinate to the High Court. Complaint in this case was filed the High Court through its duly authorized Registrar.

12. However, before filing the complaint for the offences mentioned in Section 195 Cr.P.C., procedure as prescribed under Section 340 Cr.P.C is required to be followed. Section 340 Cr.P.C reads as under:-

“Procedure in cases mentioned in section 195

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-Section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if

any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first-class having jurisdiction;

d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) to (4) xxxxxxxxxxxx (not relevant)

13. It is clear from the bare perusal of above provision that Section 340 Cr.P.C prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C., it is open to the Court before which the offence was committed to prefer a complaint for prosecution of the offender, Section 340 Cr.P.C prescribes the procedure as to how that complaint is to be preferred. Provisions under Section 195 Cr.P.C are mandatory and no Court can take cognizance of offences referred therein. It is in respect of such offences, the Court has jurisdiction to proceed under Section 340 Cr.P.C and a complaint outside the provisions of Section 340 Cr.P.C cannot be filed by any Civil, Revenue or Criminal Court. Reliance in this regard can be made to ***M.S. Ahlawat Vs. State of Haryana, 1999(4) RCR (Criminal) 718.***

14. In the present case, order dated 05.02.2003 was passed by this High Court during proceedings of the FAO filed by wife Smt. Sukhwinder

Kaur against the order of the District Judge, whereby divorce petition was allowed. However, neither any direction was given to follow the procedure as prescribed under Section 340 Cr.P.C nor the Registrar General of this High Court through whom the complaint was filed before Chief Judicial Magistrate took notice of the procedure, which was to be followed under Section 340 Cr.P.C nor even the Court of Chief Judicial Magistrate, who held trial on the basis of a complaint followed any such procedure. In the face of this legal lacunae, the prosecution of any of the accused- appellant under Section 193 IPC cannot be sustained.

15. Though the prosecution under Section 193 to be read with Section 196 of IPC, could not be launched due to non following the procedure prescribed under Section 340 Cr.P.C as has been above stated, but there is no requirement to follow such procedure under Section 340 Cr.P.C for offences which are not covered under Section 195 Cr.P.C. In other words, for the offences which are not mentioned under Section 195 Cr.P.C., the Court can take cognizance. Prosecution in this case was also sought for committing the offence under Section 419 Cr.P.C to be read with Section 416 IPC, which is not mentioned under Section 195 Cr.P.C and so cognizance could have been taken under the said provision of law.

16. However, there is another legal provision, which comes to the rescue of the accused in this regard. Alleged offence was committed on 17.04.1997, when accused Raju alias Ashok allegedly appeared as a fake witness at the behest of accused Gurcharan to depose in the divorce petition. Order by this High Court was passed on 05.02.2003 directing the Registrar General to lodge complaint for prosecution of the offenders. Complaint in fact was filed on 06.06.2003, i.e., more than six years after commission of

the offence.

17. Offence under Section 419 Cr.P.C is punishable maximum up to the imprisonment of three years. Section 468 Cr.P.C prescribes a time limit of three years, within which the Court can take cognizance of an offence, which is punishable with imprisonment for a term exceeding one year but not exceeding three years. No doubt, it is true that the period of limitation in relation to the offences which may be tried together is to be determined with reference to the offence which is punishable with most severe punishment but in this case, Section 193 IPC is the only provision under which the prosecution was sought and which is punishable up to seven years' imprisonment. However, as has been observed above, cognizance for committing the offence under Section 193 IPC could not have been taken by the Court as the procedure prescribed under Section 340 Cr.P.C before making a complaint under Section 195 Cr.P.C was not followed.

18. Apart from the legal lacunae as have been noted above, certain facts have been rightly urged before this Court by learned counsel for the appellants, which create doubt in the prosecution story. Statement of AW2 Raju alias Ashok son of Sat Pal son of Chatin was recorded on 17.04.1997 during divorce proceedings, in which he deposed not only regarding the illicit relations of Sukhwinder Kaur with another person but also claimed to be the real cousin of Gurcharan, i.e., husband of Sukhwinder. CW2 Jagjit Singh (father of Sukhwinder Kaur) and CW3 Sukhwinder Kaur, in their testimony during trial of the criminal complaint stated that accused Raju alias Ashok had appeared before the Court in divorce proceedings on 17.04.1997 in their presence but it was found later on that he was not the genuine cousin of Gurcharan and rather, a fake person had been produced. It

was claimed by Raju alias Ashok in his testimony on 17.04.1997 that he was not only the real cousin of Gurcharan but also neighbor to Gurcharan and Sukhwinder. Marriage of Gurcharan and Sukhwinder had taken place in March, 1985 as evident from the petition under Section 13 of the Hindu Marriage Act available on record. Deposition was made by Raju alias Ashok in April, 1997, i.e. more than 12 years of the marriage. In case a fake person appeared in the Court on 17.04.1997 by claiming himself to be neighbour of Gurcharan and Sukhwinder; and real cousin of Gurcharan, i.e., husband of Sukhwinder, CW2 Jagjit and CW3 Sukhwinder would have raised objection immediately as both of them claimed to be present in the Court on that day. However, their testimony made during trial of complaint case reveal that no such objection was raised at that time and rather, complaint was made to the District Judge, Bathinda in July, 1997, i.e., more than after three months. This indicates that either CW2 and CW3 were not present during the testimony of AW2 Raju alias Ashok and so, they are deposing falsely regarding the identity of Raju alias Ashok; or they are not aware about the person who appeared in place of the cousin of Gurcharan.

19. In the above circumstances, testimony of CW2 Jagjit and that of CW3 Sukhwinder Kaur cannot be believed to hold that it is accused – appellant Raju alias Ashok, who had appeared in the Court as fake person on 17.04.1997 to depose at the behest of Gurcharan.

20. Further, after application was moved by Jagjit Singh on 29.07.1997 alleging that a fake person had impersonated real Ashok, accused Raju alias Ashok was summoned on his address provided by Sukhwinder and in his statement, he disclosed that he was Ashok son of Amar Nath; that parties were known to him and that he had never appeared before the Court

as a witness on behalf of Gurcharan. In case, it is accused – appellant Raju alias Ashok, who had impersonated the real Ashok son of Satpal, nothing had stopped either the Court or the complainant to obtain the specimen signatures of the accused there and then for getting the same compared with the signatures appearing on the statement of the fake witness who appeared on 17.04.1997 during the divorce proceedings. In fact, inquiry under Section 340 Cr.P.C was not held. Had it been done so, probably, the said procedure would have been followed.

21. Further CW4 Shri S.M. Nayyar, Advocate was representing husband Gurcharan in the divorce proceedings; whereas CW6 Abhey Singla, Advocate was representing wife Sukhwinder Kaur. As per their testimony, Raju alias Ashok son of Sat Pal was examined on 17.04.1997 during divorce proceedings in their presence. CW6 in fact had cross-examined the witness. However, none of these witnesses were asked to identify the accused Raju alias Ashok during the trial of the complaint case as to whether it is the said accused, who had appeared as a witness on 17.04.1997.

22. Thus, CW2 and CW3 are not reliable as their presence is highly doubtful; whereas CW4 and CW6 did not prove the identity of the accused, as they were not even asked in this regard.

23. Notwithstanding the fact that identity of the person, who has been impersonated, is not clear, even the exact and clear name of the cousin of husband of Gurcharan Singh is not clear. It is the person by the name of Raju alias Ashok son of Sat Pal son of Chatin, who appeared as AW2 during divorce proceedings on 17.04.1997 claiming to be the cousin of Gurcharan. After the complaint was made before District Judge, Raju alias Ashok son of Amarnath appeared on 19.02.1998 and stated that he had not appeared as a

witness. During trial of the complaint, one Rajnish son of Sat Pal was examined as CW1 who stated that he was the real cousin of Gurcharan and that he had not appeared as a witness. He did not disclose his name to be the alias name of Raju or Ashok. Besides, he disclosed his grandfather's name as Kehar Singh; whereas AW2 Raju alias Ashok, the fake person had disclosed name of his grandfather as Chatin. The grandfather of the present accused – appellant Raju alias Ashok is Chiranji Lal. This further creates doubt as to identity of the fake person and as to the real person, who has been impersonated.

24. On account of the entire discussion of the factual as well as legal position as above, it is held that conviction of the none of the appellants can be sustained. Therefore, the impugned judgment of conviction and order of sentence are set aside. Both the appellants are acquitted of the charges.

April 28, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No