

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

CRR-3006 of 2009

Date of pronouncement : January 05 , 2023

Harmel Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. H. S. Randhawa, Advocate (Amicus Curiae)
for the petitioner.

Mr. Jaiteshwar Singh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

The present revision petition is directed against the judgment passed by the Additional Sessions Judge, Ludhiana dated 28.10.2009 whereby the order of conviction passed against the petitioner holding him guilty for the offence punishable under Section 420 IPC and the order of sentence passed by JMIC, Ludhiana stands rejected.

As per the case of the prosecution, an application was received at the behest of Ravinder Singh son of Kuldip Singh who alleged that:

“accused Harmel Singh had started a lucky scheme registered name and as was told by him it was a registered one. He had opened his office under the the name and style Mangat and Dhaliwal Motors, on Rahon Road at village Chonta, P.S. Koomkalan. As per scheme an amount of Rs. 1,000/- was to be deposited by a person every month and a draw of scooter was to be drawn. The scheme was for 27 months and if any person does not get the draw, he would

be paid the entire amount. His brother Sikandar Singh who is serving in the army had deposited the instalments in the name of his son Amanpreet. Now the instalments are over, but Harmel Singh has not returned their money, but is threatening them. By doing so, Harmel Singh has cheated them.”

Complainant Ravinder Singh appeared as PW-2 and Sikander Singh appeared as PW-4 fully supported the case of the prosecution. After analyzing the evidence on record trial court held petitioner guilty of offence punishable under Section 420 IPC and awarded the following sentence:-

“I have heard APP for the State and the convict on the quantum of sentence. The accused has stated that he is the only bread winner of his family and have five children and wife and he has not committed any offence and requested that he is innocent and prayed for taking lenient view. On the other hand APP has argued that as per the offence committed by the accused no lenient view can be taken against the accused while awarding the sentence. Keeping in view the facts and circumstance of the case the accused is sentenced to undergo Rigorous imprisonment for a period of one year and to pay fine of Rs. 1000/- and in default of payment of fine accused shall further undergo Rigorous imprisonment for one month. Fine paid against proper receipt. Case property if any be dealt with as per rules after the expiry period of appeal/revision,if any. File be consigned to the record room.”

Learned counsel representing the petitioner has primarily relied upon the statement of PW-7 Jagpal Singh claiming that he was the only independent witness but he has not supported the case of the prosecution and was declared hostile. He further submits that the printer, though examined has nowhere supported the case of the prosecution. He thus, submits that even if the case of the prosecution is taken to be on its face value the same would entail civil liability and not criminal liability. He submits that in order to prove offence of

cheating as defined under Section 415 IPC, the prosecution is required to prove dishonest intention of the accused at the inception of transaction. He submits that in a case wherein after collecting installments the accused has failed to keep his promise it will be a case of subsequent dishonest conduct which would not make him liable for offence of cheating. Reliance is being placed on **Srirammulu Vs. State of Tamil Nadu through Sub Inspector of Police in CrI.R.C.No.544 of 1998 decided on 31.7.2000 Law Finder Doc.id #13340.**

He further submits that the present case relates to the year 2003. The petitioner has already faced protracted trial for about 20 years and thus, even if the Court finds him guilty he would be entitled for grant of probation. The reliance is being placed upon the judgment of Apex Court in the case of **Kunti Kumari Vs. State of Jharkhand Law Finder Doc Id # 1968333, Chandreshwar Sharma Vs. State of Bihar Law Finder Doc Id # 183829** and judgment of this Court in the case of **Diwan Singh and another Vs. State of Punjab Law Finder Doc Id #1337595.**

I have heard learned counsel for the petitioner and have gone through the record of the case.

Collection of installment of Rs.1,000/- at the hands of the accused-petitioner stands fully proved. Receipts Ex.P-1 to P-17 stand duly proved which are duly signed by the appellant-accused. Sikander Singh has appeared and fully proved that the amount was paid by him in the name of his son Amanpreet Singh. Printer Sanjeev Kumar has also been examined. Thus, the contention raised by learned counsel for the petitioner that non-examination of Amanpreet Singh is fatal to the present case sans merit.

Admittedly, the petitioner was the one who disclosed the lucky scheme

and asked the complainant to register in the same. On the pretext of such scheme he

collected Rs. 1,000/- per month. Draw pertaining to scooter LML Vespa was being conducted every month. At the end of the scheme the persons who could not succeed but had paid 27 installments were entitled to have the scooter or to have an amount of Rs.27,000/-. Thus, to say that the offence of cheating against the petitioner is not made out cannot be accepted.

As per the settled proposition of law scope of revision is much limited as compared to the scope of appeal. The revisional jurisdiction can be exercised by the High Court in the cases of legal infirmities and as per the series of the precedents some of the illustrative categories are:

- i) where the trial court has wrongly shut out evidence which the party wish to produce.
- ii) where the admissible evidence brought on record by the defence has been wrongly brushed aside as inadmissible.
- iii) where the trial court had no jurisdiction to try the case and yet the accused stands convicted.
- iv) where the material evidence has been overlooked either by the trial court or the appellate court or the order has been passed by considering irrelevant evidence.
- v) where the conviction is based upon a view which is impossible and improbable.

Since, learned counsel representing the petitioner has not been able to point out any case warranting interference in the finding of guilt as per the principles

enumerated hereinabove, this Court finds no ground to interfere in the finding of conviction of the petitioner.

Coming on to the sentence, the petitioner has undergone sentence of 26 days out of one year. He is stated to be first time offender and is never reported to have misused the concession of bail. The Apex Court in the case of **Kunti Kumari (supra)** held as under:-

“5. Section 3 of the 1958 Act confers power upon the court to release certain offenders after admonition when a person is found guilty of having committed an offence punishable under Section 379 or Section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and there is no previous conviction proved against such offender. In the present case, the conviction is under Section 504 IPC where the maximum sentence provided is two years. There is no previous conviction of the appellant. Further, Section 11 of 1958 Act provides that an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision. Thus, this Court under the 1958 Act itself can pass an order at this stage. (emphasis ours)

6. Considering the facts and circumstances of the case, we deem it appropriate that the appellant may be released instead of carrying out the sentence after due admonition. Accordingly, agreeing with the conviction under Section 504 IPC, the appellant is directed to be

released after admonition under Section 3 of the 1958 Act. To that extent the sentence is modified and the appeal is allowed.”

In the case of **Chandreshwar Sharma's case (supra)** it was held that:

“From the perusal of the judgment of the learned Magistrate as well as the Court of Appeal, and that of the High Court, it transpires that none of the forums below had considered the question of applicability of Section 360 of the Criminal Procedure Code. Section 361 and Section 360 of the Code on being read together would indicate that in any case where the Court could have dealt with an accused under Section 360 of the Code, and yet does not want to grant the benefit of the said provision then it shall record in its judgment the specific reasons for not having done so. This has apparently not been done, inasmuch as the Court overlooked the provisions of Sections 360 and 361 of the Criminal Procedure Code. As such, the mandatory duty cast on the Magistrate has not been performed. Looking to the facts and circumstances of the present case, we see no reasons not to apply the provisions of Section 360 of the Criminal Procedure Code. We accordingly, while maintain the conviction of the appellant, direct that he will be dealt with under section 360, and as such, we direct that the appellant be released on probation of good conduct instead of sentencing him, and he should enter into a bond with one surety to appear and receive the sentence when called upon during the period of one year for the purpose in question. The bond for a year shall be executed before the learned Chief Judicial Magistrate, Ranchi, within 3 weeks from today. The appeal is disposed of accordingly.”

A co-ordinate Bench of this Court in the case of **Diwan Singh Vs. State of**

Punjab Law Finder Doc Id # 1337595 while relying upon **Karamjit Singh Vs.**

State (Delhi Admn.), 2001 (9) SCC 161 held as under:-

“17 As far as the prayer for release of the petitioner on probation of good conduct is concerned, this Court feels that the purpose of criminal law justice is not only to bring peace, harmony and discipline in the society, but also to give an opportunity to an erring individual to reform himself, so that there is everlasting peace in the society. This view finds support from the judgment of Hon'ble Supreme Court in the case of Karamjit Singh v. State (Delhi Admn.), 2001(9) SCC 161, wherein the following observations were made:-

"Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case the Court has to weight the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is what is needed in such a case, a balance between the interest of the individual and the concern of the society weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence

in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law."

In view of the aforesaid law and the fact that the petitioner is a first time offender has faced a protracted trial for about more than 20 years, it is ordered that the petitioner be released under Section 4 (1) of the Probation of Offenders Act, 1958 for a period of one year on his furnishing personal bonds in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of CJM., Ludhiana with an undertaking that during the period of probation, he shall not commit any offence and shall maintain piece and good behaviour. In case the petitioner violates the terms of the bond, he shall be bound to appear before the CJM., Ludhiana to undergo the remaining sentence.

The petition stands disposed off.

(PANKAJ JAIN)
JUDGE

January 05 , 2023

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Whether speaking/reasoned Yes

Whether Reportable : Yes