

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CRR-2300-2015 (O&M)
Date of decision: 03.02.2023

RAJESH AND ORS

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CRR-2636-2015 (O&M)

RAM KUMAR

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Johan Kumar and Mr. Deepender Singh, Advocates
for the petitioners.

Ms. Aditi Girdhar, AAG Haryana.

AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned Criminal
Revision petitions as they arise out of common impugned judgments.

Present revision petitions have been preferred against the judgment
dated 21.10.2013/23.10.2013 passed by learned JMIC, Faridabad whereby the
petitioners have been convicted under Sections 420 and 120-B IPC and have been
sentence to undergo rigorous imprisonment for three years and judgment dated
06.06.2015 whereby the appeal filed by the petitioners before the learned
Additional Sessions Judge, has also been dismissed.

Facts briefly put are that a complaint was given by Jagbir Singh son

of Vijender Singh alleging that accused persons Kamlesh Kumar Chauhan, Rana Pratap Singh, Rakesh Kumar and Ram Kumar Pawar were running a recruitment racket in Indian Railways. He informed that Rakesh @ Vicky took him to Kamlesh Kumar Chauhan at his residence in Faridabad in April, 2010. They both told that Vicky was enrolled in railway. They were giving coaching and training for Indian Railway Recruitment exams. They were receiving questions and syllabus from railway authorities in advance. They both told that they can get him enrolled in Concor Wagon Department of Indian Railway, if he paid Rs.4.50 lacs for coaching of test/exams preparations, residence, food, conveyance, examination and training. Kamlesh Kumar Chauhan assured him that he will pay whole amount with 3% interest if they failed to get a job for him in Indian Railways. He gave an affidavit to this effect. So, he gave them Rs.4.50 lacs. Thereafter they took him to Rana Pratap Singh in Trilokpuri where Ram Kumar Pawar was also present. He introduced himself as Manager Operations in Railways. They both took them to outside of Delhi Railway Station and gave a bogus appointment letter. They told him that he was given posting at Faridabad and Rakesh @ Vicky was their Incharge. They also took details of his bank account. Rakesh Kumar marked their attendance. They deposited Rs.6,500/- per month till August, 2010 in his account. When enquired about full salary, they told him that same would be paid after successful completion of training. After sometime, he became suspicious of them. So, he enquired about his senior officers, headquarter etc. They told him that they will take him to headquarter after few days. He enquired from bank about mode of payment of his salary. He was informed that same was deposited in cash in his account. Bank account details were already obtained from them. He demanded his money, they refused and they threatened him to kill, if he went to police. He

further informed that Manoj Kumar, Ashok Kumar, Ajit, Manish, Amit, Kapil (Sector 18), Faridabad, Rajesh Kumar from Mayur Vihar were few other persons who also became victim of their fraud. These persons had a big chain and extorted huge amount from innocent persons.

On this complaint, case was registered and the matter was investigated. Accused Rajesh, Ram Kumar, Rakesh Vicky Rama Partap and Bhim Rao were arrested and challaned. Accused Kamlesh Kumar Chauhan was declared proclaimed offender.

Finding a *prima facie* case under Sections 420, 467, 468, 471 and 506 IPC read with Section 120-B IPC, the accused were charge-sheeted.

In support of its case, prosecution examined in as many as 27 prosecution witnesses.

Statements under Section 313 CrPC of all the accused persons were recorded, wherein the accused denied all the allegations levelled against them and pleaded their innocence, while alleging that they have been falsely implicated in this case and wants to lead defence evidence. In their defence, accused examined as many as 11 witnesses.

After hearing the arguments addressed by learned counsel for the parties and appraising the material/evidence, brought on record, the learned trial court vide impugned judgment dated 21.10.2013 convicted the accused-petitioners for the commission of offences punishable under Sections 420 read with Section 120-B of Indian Penal Code and sentenced them vide order of sentence dated 23.10.2013 to simple imprisonment for 3 years.

Aggrieved petitioners preferred an appeal before the Court of Sessions, which was also dismissed by the learned Additional Sessions Judge,

Faridabad vide judgment dated 06.06.2015.

Hence, the present revision petitions.

Learned counsel for the petitioners at the outset submit that they does not challenge the conviction awarded to the petitioners by the learned Judicial Magistrate First Class, Faridabad, vide judgment dated 21.10.2013/23.10.2013, as affirmed by the learned Additional Sessions Judge, Faridabad vide judgment dated 06.06.2015, whereby the petitioners were convicted and sentenced to 03 years' simple imprisonment. They further submit that petitioner Nos.1 to 3 have undergone 2 years 2 months; petitioner No.4 has undergone 1 year 6 months in CRR-2300-2015 and petitioner in CRR-2636-2015 has undergone 2 years 1 month and 7 days of sentence out of 3 years of simple imprisonment awarded to them. He relies on the judgment passed by this Court in the case of **Daya Nand Swami Vs. State of Haryana**, CRR No.1284 of 1999 decided on 20.04.2009; **Pawan Kumar Vs. State of Punjab**, CRR Nos.3283 and 38427 of 2019 decided on 05.03.2020.

Opposing, the learned counsel for the State 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.

Heard.

The petitioners have given up their challenge to the conviction and have prayed for reduction of their sentence as having been undergone, in view of the mitigating circumstances. Still having perused the judgment of the trial Court, the evidence was thoroughly examined therein and it was found that prosecution has proved its case beyond shadow of reasonable doubt the fact of conspiracy of accused and cheating of the victims. It has been observed that the disclosure

statement in the nature of confession of accused-petitioners mention that they had admitted having documents like registers and account books, computers with regard to crime. The learned Appellate Court had dismissed the appeal finding no infirmity or illegality in the judgment of conviction. Accordingly, both the Courts below after having scrutinized the evidence on record have rightly convicted the petitioners 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

Regarding the prayer of the learned counsel for the petitioners that 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 thus:

“....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....”

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."

It is settled proposition of law that each case is to be decided on its own peculiar facts and circumstances.

This Court in the case of **Daya Nand Swami** (*supra*), wherein the petitioner therein was convicted under Section 420 IPC and was sentenced for 4 years RI, had reduced the sentence of the petitioner to the period already undergone of more than 02 months considering that the petitioner was old, infirm and frail and had suffered protracted trial of 22 years. Similarly, in the case of **Pawan Kumar** (*supra*), wherein the accused-petitioner had undergone sentence of more than 1 year and 03 months out of total sentence of two years, his sentence was reduced to the period already undergone considering that the petitioner had faced the agony of trial for the last 7 years.

Considering the judgments referred to hereinabove and the mitigating circumstances as brought out by the learned counsel for the petitioner in the present case, inasmuch as that the FIR was registered under Sections 420, 467, 468, 471, 506 and 120-B of the IPC, however, they were acquitted in 467, 468, 471, 506 IPC and convicted only under Sections 420 read with Section 120-B IPC; petitioners are the sole breadwinners of their families; they are not involved in any case of similar nature; petitioner Nos.1 to 3 have undergone 2 years 2 months, petitioner No.4 has undergone 1 year 6 months in CRR-2300-2015 and in CRR-2636-2015, Ram Kumar, aged 70 years is a heart patient and has undergone 2 years 1 month and 7 days of sentence out of 3 years of simple imprisonment awarded and have also faced the vagaries of trial for the last about 12 years, this Court finds that the ends of justice would be adequately met if the sentence of the petitioners is ordered to be reduced to the period already undergone by them.

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.

With the above modification in the order of sentence dated 23.10.2013 passed by Judicial Magistrate Ist Class, Faridabad, as noted above, the criminal revision petition is partly allowed.

(AMAN CHAUDHARY)
JUDGE

February 03, 2023

M.Kamra/S.Sharma(syr)

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