

**CRR-1865-2019 (O&M)**

**231**

**2023:PHHC:110189**

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

**CRM-23299-2019 in/and  
CRR-1865-2019 (O&M)  
Date of decision: 04.07.2023**

Harmesh Chand

....Petitioner

Versus

Vijay Kumar and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

**Present:-** Mr. Harish Goyal, Advocate  
for the applicant/petitioner.

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**PANKAJ JAIN, J. (ORAL)**

**CRM-23299-2019**

This is the revision at the behest of the complainant where there is a delay of 2 days in filing the revision petition.

From the averments made in the application seeking condonation of delay, this Court is satisfied that the petitioner has made a sufficient ground for condoning the delay.

Application stands allowed. Delay of 2 days in filing the revision petition is condoned.

**CRR-1865-2019**

Complainant is aggrieved of the judgment passed by Ld. Appellate Court dated 10.04.2019 affirming judgment of acquittal *qua*

respondent No.1 passed by Ld. Trial Court in FIR No.102 dated 25.06.2013 registered under Sections 420 & 406 IPC at Police Station Dirba.

2. FIR was registered at the behest of complainant/petitioner alleging that he has been duped for a sum of Rs.8 lakh by respondent No.1 on different dates in the name of higher police officers on the pretext of helping him to get his amount of Rs.4,25,000/- and Rs.2,00,365/- refunded from Kimat Rai, Rakesh Kumar and Rishipal. Ld. Trial Court after appraising the whole evidence threadbare found that there is no evidence on record to show that accused persons extorted Rs.8 lakh from the complainant. Moreover, the complainant/petitioner himself was not clear as to whether he alleged criminal breach of trust against the petitioner or cheating. It has also come on record that prosecution examined Sharanjit Singh, SP(H) (PW7) who in his cross-examination admitted that in the inquiry conducted by police on the complaint made by petitioner, the allegations with respect to duping of Rs.8 lakh were found to be false. The aforesaid finding recorded by Ld. Trial Court was affirmed by Ld. Appellate Court which on reappraisal of whole evidence held as under:-

*“17. As is transpired from the above discussion, the line of cross examination followed by the defence is an admission of the fact that Vijay Kumar owed an amount of Rs.1,50,000/- to Harmesh Chand. Of course, it is not so mentioned in the application Ex. PA, on the basis of which present FIR was registered. At the same time, no evidence is available on the file regarding the main allegations of the complainant regarding receipt of Rs.8,00,000/- by the accused from the complainant in the name of police officers to get refunded the amount of Rs.4,25,000/- and Rs.2,00,365/- from Kimat Rai, Rakesh Kumar and Rishipal, qua which FIR no. 145 of 2011 under Sections 420 and 120B IPC was already registered against them with Police Station Dirba. Even otherwise, it does not seem probable*

*that the complainant gave Rs.8,00,000/- allegedly to get refunded the amount of Rs.4,25,000/- and Rs.2,00,365/- from the said persons. The complainant has not put forth a true version before the Court. The evidence on record is not enough to prove the ingredients of the offence of cheating or criminal breach of trust as indicated above. The complainant-appellant himself has put forth a bald version before the Court, which is not supported by documentary evidence. It seems that he only wants to involve the accused in criminal proceedings by hook and crook just to get refunded the loan amount of Rs. 1,50,000/-. The prosecution failed to produce on record sufficient evidence to prove, beyond the shadow of reasonable doubt, the mensera of accused or that the accused had a dishonest intention right from the very beginning to cheat the complainant or to commit the criminal breach of trust. Mere non refund of amount of Rs.1,50,000/- gives rise to a civil remedy only. It is well settled law that judicial process is not an instrument of oppression or needless harassment. Criminal proceedings can not be used as a means for redressing the civil wrongs or for recovery of civil debts in the absence of any provision to that effect. The object of civil proceedings is to recover money or any other property or the enforcement of right, whereas that of criminal is the punishment for an offence. In such like cases, the Court must be circumspect and judicious in exercising discretion while taking into consideration all relevant facts and circumstances before issuing process, lest it should be an instrument at the hands of complainant to coerce the accused for enforcement of a civil liability. Reliance in this regard can be placed on Devendra Vs. State of U. P. 2010 (4) Recent Criminal Reports 448, wherein the Honorable Apex Court has held that a distinction must be drawn between a civil wrong and a criminal wrong. When, dispute between the parties, constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed when no case for taking cognizance of the offence has been made out. In Mohd. Ibrahim and others Vs. State of Bihar and another, 2009 (4) Recent Criminal Reports page 369, the Honorable Apex Court has ruled that there is growing tendency of complaints attempting to give the cloak of criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused or out of enmity towards the accused or to subject the accused to harassment. The criminal*

*courts should ensure that the proceedings before it are not used for settling scores or to pressurize parties to settle civil dispute.*

*Applying the parameters of law laid down in the above pronouncements, when the dispute is of civil nature, the appellantcomplainant should have taken recourse to the appropriate remedy available under law within statutory period of limitation.”*

3. After hearing counsel for the petitioner, this Court finds that there is no legal infirmity in the judgment of acquittal passed by Ld. Trial Court and affirmed by Ld. Appellate Court.

4. Revisional jurisdiction under Section 401 Cr.P.C. is limited and as per settled law unless any error of law on the part of Ld. Trial Court is pointed out, the same cannot be pressed seeking re-appreciation of evidence. Reference can be made to the judgment of Supreme Court in the matter of ***Thankappan Nadar and others vs. Gopala Krishnan and another, 2002(9) SCC 393***. As per settled law 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.

5. Exercise of revisional jurisdiction under Section 401 Cr.P.C. is much narrow as compared to appellate jurisdiction.

6. Ld. Counsel for the petitioner has not been able to point out any circumstance which would warrant exercise of revisional jurisdiction in the findings recorded by the Courts below.
7. In the absence of any jurisdictional or legal error committed by the Courts below, this Court does not find any reason to exercise revisional jurisdiction to reappraise the evidence which is beyond the scope. Consequently, the findings recorded by the Courts below *qua* acquittal of respondent No.1 are affirmed.
8. Revision petition is dismissed.
9. Pending application(s), if any, shall also stand disposed of.

( PANKAJ JAIN )  
JUDGE

July 04, 2023  
*ashish*

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