IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 26th of July, 2023
Pronounced on : 5th October, 2023

CRR No.2246 of 2019 (O&M)

Rajwinder Singh @ Kala .....Petitioner

Versus

State of Punjab ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. Kunal Vinayak, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

Petitioner has filed present revision petition impugning judgment passed by Sessions Judge, Barnala dated 25th of July, 2019 dismissing the appeal preferred by the petitioner against the judgment of conviction passed by JMIC, Barnala dated 13th of November, 2017 convicting the petitioner for offence punishable under Section 420 IPC and sentencing him to undergo RI for a period of 3 years and to pay a fine of Rs.1,000/- and further R.I. for 10 days in default of payment of fine.

2. Petitioner was booked in FIR No.67, dated 19th of February, 2011 registered for the offences punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code, at Police Station

City Barnala which came into existence on the complaint filed by Regional Manager, State Bank of India alleging that the petitioner availed a loan of Rs.10.00 lac under KGC scheme and Rs.3.00 lac in KCC scheme misrepresenting to be owner of 40 *bighas* of land comprised in *Khata* No.122/241 *Khasra* No.4/7-7, 7/6-5, 8/6-5, 10/9-8, 600 min 10-15. It has been claimed that while availing the loan the petitioner mortgaged the aforesaid property with the bank and committed default in the payment of loan. On inquiry it was found that the accused was owner only to the extent of 1/8 share in the land measuring 71 *bighas*, 19 *biswas*. The loan was obtained by the petitioner on the strength of forged *Jamabandi*. Trial Court after analyzing the evidence on record found that there was no evidence on record that the petitioner committed any act of forgery but prosecution proved that the title documents submitted by the petitioner at the time of obtaining loan were not as per record and wrongly demonstrated the petitioner to be exclusive owner of the whole land whereas in fact he was owner to the extent of 1/8 share only. Trial Court found that the petitioner was guilty of misrepresenting himself to be owner of the total land to obtain loan and was thus guilty of offence punishable under Section 420 IPC.

3. In appeal preferred by the petitioner the Lower Appellate

Court affirmed the findings recorded by the Trial Court and confirmed the sentence as well holding that the petitioner was not entitled for release on probation as his act has caused loss to the economy of the nation.

4. At the time of hearing of this revision petition on 15th of November, 2022 following order was passed :

> "Learned State counsel has referred to the order dated 20.12.2019, vide which sentence of the petitioner was suspended, noticing the fact that he has paid the entire loan amount.
>
> The Investigating Officer is directed to verify the aforesaid fact from the State Bank of India, Branch Barnala, whether any amount still remains to be paid or not."

5. In order to substantiate his claim that the petitioner has paid that whole of the amount counsel for the petitioner has produced receipt dated 30th of July, 2012 showing deposit of Rs.13.00 lacs, Exhibit PW-10/A, placed on record as Annexure P-4.

6. I have heard counsel for the parties and have gone through records of the case.

7. In the considered opinion of this Court the petitioner cannot deny that in the document of title in the form of *Jamabandi* which was tendered by him to the Bank Authorities he has been shown to be the exclusive owner whereas in fact he is owner to the extent of 1/8 share of land. Thus, no fault can be found with the findings

recorded by the Courts below w.r.t. the petitioner being guilty of offence punishable under Section 420 IPC. Resultantly, the findings *qua* the conviction of the petitioner under Section 420 IPC are hereby affirmed and maintained.

8. Coming on to the sentence part, Appellate Court denied the benefit of probation to the petitioner on the ground that the accused secured the bank loan by misrepresenting the bank and resultantly harmed the economy of the nation and thus does not deserve to be released on probation. In the considered opinion of this Court, Appellate Court erred in law in denying the benefit of provisions of Probation of Offenders Act, 1958 to the petitioner. Looking merely at the monetary part is not always good economics. The real wealth of the society lies in its human resource. Society must always strive for providing a chance to its subject to reform. Appellate Court ought to have considered the case of the petitioner for grant of probation in the right earnest and in the light of objects of the Probation of Offenders Act i.e. reformation, rehabilitation and reintegration of the offender with the society. Petitioner is a convict under Section 420 IPC. Admittedly he was co-owner though not exclusive owner of the mortgaged land and thus it cannot be said that he had no interest in the mortgaged land. He is a rustic agriculturist. Admittedly, he repaid the

loan amount back to the bank on 30th of July, 2012. This Court vide order dated 15th of November, 2022 directed the IO to verify whether any amount still remains to be paid by the petitioner or not.

9. IO has produced statement of account which is taken on record as Mark 'X'. Registry to tag the same at appropriate place.

10. As per the same, it has been recorded that closing balance is 'nil'. Account has been closed due to non-receipt of payment and transfer to internal Accounts No.33749562793 and the present outstanding is Rs.93,915/- along with further interest @ 11.30%.

11. Counsel for the petitioner submits that the petitioner is ready to make the said payment of Rs.93,915/-. He is directed to deposit the same within a period of 4 weeks from the date of receipt of certified copy of this order.

12. The petitioner was booked in present FIR on 19th of February, 2011. Apart from this FIR, the petitioner has no criminal antecedents. He has faced prolonged prosecution of 12 years and remained on bail. There is no allegation that he ever misused the concession of bail granted by the Courts. Resultantly, this Court finds that the ends of justice would be met by dealing with the petitioner under Section 3 of the Probation of Offenders Act.

13. In view of these circumstances, I admonish the petitioner

under Section 3 of the Probation of Offenders Act for conviction earned by him under Section 420 IPC.

14. The present petition is partly allowed in the aforesaid terms.

October 05, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes