

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

CRR-4807-2018

Date of Decision: 03.05.2023

Ravi Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rajat Dogra, Advocate for
Mr. Sant Pal Singh Sidhu, Advocate
for the petitioner.

Mr. Harjinder Singh Sidhu, AAG, Punjab.

HARSH BUNGER J. (ORAL)

1. Challenge in the present revision petition is to the judgment of conviction and order of sentence dated 05.07.2018 passed by the Court of Additional Chief Judicial Magistrate, Ferozepur, whereby, the petitioner has been convicted under Section 420 of the Indian Penal Code, in case FIR No.317 dated 15.11.2014, registered under Sections 420 and 465 of the Indian Penal Code, at Police Station Sadar Ferozepur. Challenge is also to the judgment dated 27.11.2018 passed by the Additional Sessions Judge, Ferozepur, vide which the appeal filed by the present petitioner was dismissed and the aforesaid judgment of conviction and order of sentence dated 05.07.2018 was upheld.

2. Briefly stated, an FIR came to be registered on the statement of

complainant, namely Arjan Singh s/o Pathana Singh, who stated that he was to get his motorcycle bearing registration No.PB-05-N-6131, insured for the period from 12.09.2012 to 11.09.2013 and Baljinder Singh s/o Malkiat Singh introduced him with Ravi Kumar, Insurance Agent, who used to sit at Suvidha Centre, Ferozepur Cantt. Ravi Kumar obtained Rs.1,500/- from him for insuring his motorcycle, which he gave in the presence of Amrik Singh and Surjit Singh. Accused Ravi Kumar after receiving the amount of Rs.1,500/-, handed over the insurance policy of motorcycle, allegedly issued by insurance company namely, The New India Assurance Company Limited, for a period from 12.09.2012 to 11.09.2013. That the fact of insurance policy being not genuine, being forged and fabricated and being not issued by the aforementioned Insurance Company; came to the knowledge of complainant from the counsel of the said Insurance Company, during the proceedings of a case, wherein motorcycle in question was involved in an accident. Complainant along with Amrik Singh and Surjit Singh met the accused Ravi Kumar, number of times but to no effect and rather the accused threatened the complainant with dire consequences. On the basis of the said application, enquiry was conducted by Head Constable Gurmail Singh and on the basis of enquiry report submitted by him, the instant FIR was registered.

3. Investigation in the case was pressed into service and on completion thereof, challan was presented against the accused for offences under Sections 420 and 465 of the Indian Penal Code.

4. Upon finding a *prima facie* case, the trial Court framed charges against accused under Section 420 and 465 of the Indian Penal Code, to

which the accused pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined the following witnesses:-

1.	<i>Assistant Sub Inspector Satpal (Investigating Officer)</i>	<i>PW-1</i>
2.	<i>Arjan Singh (complainant)</i>	<i>PW-2</i>
3.	<i>Head Constable Gurnam Singh</i>	<i>PW-4</i>
4.	<i>Head Constable Gurmail Singh (Inquiry Officer)</i>	<i>PW-5</i>
5.	<i>Bansi Lal, Clerk, The New India Assurance Company, Ferozepur City</i>	<i>PW-6</i>

6. After closure of prosecution evidence, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. All the material incriminatory evidence/material was put to him, which he denied in toto and pleaded false implication. In defence, no evidence was produced.

7. The trial Court framed the following points of determination:-

- 1. Whether the accused cheated the complainant by inducing him to deliver a sum of Rs.1,500/- on the pretext of doing insurance of his motorcycle bearing No.PB-05-N-6131 and thereafter, delivered him a forged Insurance Policy and thereby committed the offences punishable under Section 420 IPC?*
- 2. Whether the accused Ravi Kumar forged the Insurance Policy pertaining to motorcycle bearing No.PB-05-N-6131 and thereby committed the offence of forgery under Section 465 IPC?*
- 3. Whether prosecution has been able to prove its case against the accused beyond the shadow of*

reasonable doubt?

8. After considering the material/evidence available on record, the learned trial Court returned the following findings :-

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18. Now, in the present case, accused Ravi Kumar has been charge-sheeted for the offences under Sections 420,465 of IPC. As far as the offence under section 420 IPC is concerned, it has been alleged by the prosecution that the accused induced the complainant to deliver him a sum of Rs. 1500/- on the pretext of insuring the motorcycle of the complainant Arjan Singh bearing registration No PB-05-N-6131 but thereafter, the accused cheated the complainant and caused wrongful loss to the complainant by delivering him a forged and fabricated Insurance Policy and in order to prove the said cheating being committed by the accused with the complainant, the prosecution has examined the complainant Arjan Singh who in his testimony as PW2 has specifically deposed about the cheating being committed with him by the accused Ravi Kumar. He has specifically deposed that the accused took an amount of Rs. 1500/- from him for insuring his motorcycle bearing registration No. PB-05-N-6131 and on payment of the said amount by him to the accused, accused Ravi Kumar handed over to him the policy allegedly issued by New India Assurance Company Ltd. for the period from 12.09.2012 to 11.09.2013. He has specifically stated that the fact of the Insurance Policy being not genuine being not insured by the New India Assurance Company and being forged and fabricated came to his knowledge from the counsel of the Insurance Company during proceedings of the trial before the Learned Sessions Court wherein the motorcycle in question was involved

in an accident upon which he gave the application Ex.P1 to the SSP, Ferozepur. He brought the original Insurance Policy and proved the copy of the same as Ex.P8 and also identified the accused present in the court being the person who had cheated him and who had obtained Rs. 1500/- from him for insuring his motorcycle bearing registration No. PB-05-N-6131. The complainant was subjected to lengthy cross-examination but nothing favourable to the accused or which could create doubt as to the cheating committed by the accused could be elicited out of the cross-examination of the complainant neither any evidence has been brought by the accused to prove any previous enmity of the complainant with the accused or any motive for false implication of the accused in the present case by the complainant.

19. The case of the prosecution regarding the Insurance Policy which was delivered by the accused to the complainant (copy of which is Ex.PS)being not genuine, being forged and fabricated and being not issued by the New India Assurance Company is proved from the testimony of PW6 Bansi Lal, Clerk, New India Assurance Company Ltd., Ferozepur who during his testimony brought the summoned record and has specifically deposed that no policy had been issued to motorcycle make Bajaj Platina bearing registration No. PB- 05-N-6131. He has further deposed that as per their computerized record, policy No. 360700311202000019 for motorcycle bearing registration No. PB-05-N-6131 (copy of which is Ex.P8) has not been issued by their company. He has proved the said record as Ex.PW6/A, the perusal of which establishes the fact of no policy being in existence in the record of New India Assurance Company pertaining to motorcycle bearing No. PB-05-N-6131. The said PW6 has also tendered into evidence

letter issued by Senior Divisional Manager namely Deen Dyal Aggarwal as Ex.PW6/B vide which it had been reported by the Senior Divisional Manager that no policy had been issued for vehicle No. PB-05-N-6131 as per their record. So, from the testimony of PW6 and from the documents Ex. PW6/A and Ex.PW6/B. it is sufficiently proved and established that the Insurance Policy allegedly issued by New India Assurance Company (copy of which is Ex.P8) which was delivered by the accused to the complainant is not a genuine policy and had not been issued by the New India Assurance Company rather the same is a forged and fabricated document which was delivered by the accused to the complainant after obtaining a sum of Rs. 1500/- from the complainant as is stated by the complainant in his testimony.

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21. So, the testimonies of the complainant, PW5 HC Gurmail Singh i.e. the Inquiry Officer and PW6 Bansi Lal, Clerk, New India Assurance Company Ltd. are corroborative to the prosecution case regarding the cheating being committed by the accused upon the complainant, inquiry and investigation conducted in the present case and as such from the aforesaid discussion, the essential ingredients of the offence punishable under Section 420 IPC, i.e. cheating have been sufficiently established against the accused beyond the shadow of reasonable doubt.

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23. As far as the offence under Section 465 IPC is concerned, it has been alleged by the prosecution that the accused Ravi Kumar forged the Insurance Policy copy of which is Ex.P8 and thereby committed the offence of forgery under Section 465 IPC but the prosecution has failed to bring any evidence to prove

that the Insurance Policy in question had been forged by the accused Ravi Kumar himself. No evidence has been brought by the prosecution as to who prepared the Insurance Policy copy of which is Ex.P8 or from whom the accused got the same prepared neither investigation regarding the same has been conducted. PW1 ASI Satpal i.e. the Investigating Officer in his cross-examination has specifically stated that he did not conduct any investigation with regard to preparation of the Insurance Policy neither from the concerned Insurance Office or from any other agency. Even the Inquiry Officer i.e. PW5 HC Gurmail Singh has in his cross-examination specifically stated that he did not inquire as to from whom the Insurance Policy was got prepared and from where it was got prepared and by whom it was prepared. The complainant has also admitted that there are no signatures of accused Ravi Kumar as an Agent or Officer over the Insurance Policy.

24. So, though the fact of Insurance Policy (copy of which is Ex.P8) which was delivered by the accused to the complainant after taking a sum of Rs. 1500/- from the complainant being not genuine, not issued by the New India Assurance Company and being forged and fabricated is established on record by the prosecution as is discussed above but the prosecution has failed to bring any evidence to prove as to who prepared the said document i.e. Insurance Policy or from whom the same was got prepared. No direct evidence has been brought by the prosecution that the forged and fabricated Insurance Policy delivered by the accused to the complainant was prepared forged by the accused himself for which benefit of doubt under Section 465 IPC goes in favour of the accused.

25. Hence, in view of the above discussion and evidence, this court has arrived at a considered opinion that the

prosecution has failed to prove its case against the accused under section 465 IPC and as such, accused Ravi Kumar is acquitted for the offence under section 465 IPC. However, the prosecution has proved its case against the accused under section 420 of the Indian Penal Code beyond the shadow of any reasonable doubt by leading cogent and convincing evidence and hence, accused Ravi Kumar is hereby held guilty under section 420 of the Indian Penal Code and is convicted thereunder. Let he be taken into custody and be heard on the question of sentence.”

9. Thus, vide judgment of conviction and order of sentence dated 05.07.2018, the Court of Chief Judicial Magistrate Ferozepur, convicted and sentenced the petitioner for the offence under Section 420 of the Indian Penal Code to undergo rigorous imprisonment for a period of one year along with payment of fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of fifteen days.

10. The appeal filed by the present petitioner came to be dismissed by the Court of Additional Sessions Judge, Ferozepur, vide its judgment dated 27.11.2018 and the aforesaid judgment of conviction and order of sentence dated 05.07.2018 was upheld.

11. Hence, the petitioner has filed the present revision petition before this Court.

12. At the very outset, learned counsel for the petitioner stated that he does not propose to challenge the impugned judgment of conviction on merits, however, he prayed for modification of the order of sentence for the period already undergone by the petitioner.

13. In this regard, it has been submitted that the FIR for the alleged

incident was lodged in the year 2014 and the petitioner has suffered the agony of trial/appeal/revision for all these years. It is further submitted that the petitioner was granted the suspension of sentence by this Court vide order dated 14.08.2019 and he has never misused the said concession. It is contended that the petitioner has already undergone sentence of nine months and fourteen days out of the total awarded sentence of one year, in the instant case and he is not a previous convict.

14. On the other hand, learned State counsel has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record. However, the fact with respect to the custody of the petitioner has not been disputed by the learned State counsel.

15. I have heard learned counsel for the parties and perused the entire material available on record, as well as judgment of the trial Court and lower Appellate Court.

16. Perusal of the judgments passed by the learned Courts below show that the trial Court has rightly appreciated the evidence on record while holding the petitioner guilty for commission of offence under Section 420 of the Indian Penal Code. The Appellate Court has also rightly dismissed the appeal filed by petitioner. There is no illegality or perversity in the findings returned by both the Courts below, which may warrant interference of this Court by invoking revisional jurisdiction. Even otherwise, the learned counsel for the petitioner has not assailed the judgments of conviction and has rather restricted his arguments qua the quantum of sentence only. Therefore, the conviction of the petitioner is

upheld.

17. Vide separate order dated 05.07.2018 passed by the Court of Chief Judicial Magistrate, Ferozepur, the petitioner has been sentenced as under: -

Offence u/s	Imprisonment
420 of the Indian Penal Code	Rigorous imprisonment for a period of one year along with payment of fine of Rs.2,000/- and in default thereof, to further undergo rigorous imprisonment for a period of fifteen days.

18. It is noticed that vide order dated 14.08.2019 passed by this Court, the sentence of the petitioner was suspended, keeping in view the fact that they remained in custody for over nine months, out of the total awarded sentence of one year.

19. This Court in **CRR-1019-2022** titled as “**Harbans vs. State of U.T. Chandigarh**” decided on **06.01.2023**, while considering the issue of quantum of sentence, in the light of various judgments rendered by Hon’ble the Apex Court in “**Mohd. Giasuddin vs State of AP**” **AIR 1977 SC 1926**; “**Deo Narain Mandal vs State of UP**” **2004(7) SCC 257**; “**Shyam Narain vs State (NCT of Delhi)**” **2013(7) SCC 77**; “**Kokaiyabai Yadav vs State of Chhattisgarh**” **2017(13) SCC 449** and “**Ravada Sasikala vs State of A.P.**” **AIR 2017 SC 1166**, held that the criminal justice jurisprudence adopted in the country is not retributive but reformatory and corrective.

20. Considering the aforesaid position of law and also the facts and circumstances of this case, since the FIR in question was lodged in 2014; the petitioner has suffered the agony of trial/appeal/revision for more than eight years; he has undergone actual sentence of nine months and fourteen days out of the total sentence of imprisonment for one year, as per

custody certificate dated 03.05.2023; he is not involved in any other case,

accordingly, this Court feels that the ends of justice would be met, if the sentence awarded to him is reduced to the period already undergone by him.

21. Accordingly, the present revision petition is partly allowed. The conviction of the petitioner is upheld. However, the sentence awarded vide order dated 05.07.2018 passed by the Court of Additional Chief Judicial Magistrate, Ferozepur (as maintained by the lower Appellate Court) is modified and the sentence of one year rigorous imprisonment awarded to the petitioner is reduced to the period of sentence already undergone by him. However, the sentence with regard to the payment of fine of Rs.2,000/- would remain the same. The bail bonds of the petitioner shall stand discharged.

22. The present petition is accordingly disposed of in the aforestated terms.

23. All pending application(s), if any, shall also stands closed, in view of the aforesaid order.

03.05.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No