

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1802-2008(O&M) &
CRR-2327-2008(O&M) &
CRR-870-2009(O&M)

Reserved on: 22.02.2024
Date of Pronouncement: 04.03.2024

CRR-1802-2008 (O&M)

SURESH CHAND RAHI AND ANOTHER

...Petitioners

Versus

U.T. OF CHANDIGARH

...Respondent

CRR-2327-2008 (O&M)

ITRAJ KHAN

...Petitioner

Versus

U.T. OF CHANDIGARH

...Respondent

CRR-870-2009 (O&M)

SANTOSH KUMAR

...Petitioner

Versus

UT OF CHANDIGARH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepak Arora, Advocate
for petitioners in CRR-1802-2008 and CRR-2327-2008.

Mr. J.S. Toor, APP, UT, Chandigarh and
Mr. Adhiraj Toor, Advocate
for U.T. Chandigarh.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall dispose of all the above-mentioned revision petitions as they arise out of the same factual background. For the sake of brevity, the facts are taken from CRR-1802-2008.
2. These instant revision petitions have been preferred against the impugned order dated 22.08.2008 passed by learned Additional Sessions Judge, Chandigarh, dismissing the respective appeals filed by the above-mentioned petitioners and upholding the impugned judgement of conviction and order of sentence dated 03.06.2003 passed by learned Judicial Magistrate Ist Class, Chandigarh in FIR No.59 of 08.06.1995 registered under Sections 420, 120-B of IPC at Police Station Manimajra, UT, Chandigarh. The petitioners were sentenced as under:-

Offence	Sentence
420 IPC r/w 120-B IPC	R.I of 2 years with a fine of Rs.1,000/- each. In case of default in payment of fine- R.I. of 2 months.

FACTUAL BACKGROUND

3. Briefly, the facts are that on 08.06.1995, the complainant namely Inderjit Babbar made a written complaint to the police, wherein, he alleged that on 04.06.1995, Itraj Khan (petitioner-accused in CRR-2327-2008) and Suresh

Chand (petitioner No.1-accused in CRR-1802-2008) came to his jewellery shop to get him to test a statue for gold content. Then on the same day, Itraj Khan, Suresh Chand, Haidri Bagum (petitioner no.2-accused in CRR-1802-2008) along with Babu Khan (co-accused) brought the said statue to the shop of the complainant. Upon testing a 750 ml dust-sample of the said statue, 500 ml of it was found to be gold. Then, after two days, the aforesaid petitioners again came to the shop of the complainant to sell the said statue and for the same, a sale consideration of Rs.2,50,000/- was agreed upon by the parties. In lieu of the same, the complainant paid a sum of Rs.1,25,000/- to the petitioners with the remaining consideration amount to be paid later on. When the complainant did further test on the said statue, the head of the same was found to be made of brass metal. The complainant tried to trace the aforesaid petitioners but remained unsuccessful, due to which he filed the said complaint before the police and a formal FIR (supra) was registered. Thereafter, the said statue was taken into custody and the petitioners were formally arrested and personally searched during the investigation. The said statue along with piece was sent to CFSL for examination. After completion of the necessary investigation, challan under Sections 420/120-B IPC was presented in the learned trial Court.

4. The learned trial Court upon finding a prima-facie case, framed charges against the petitioners under Section 420 read with Section 120-B of IPC, to which they pleaded not guilty and claimed trial.

5. On assessing the material available on record, the learned trial Court vide judgment of conviction and order of sentence dated 03.06.2003 convicted and sentenced the petitioners under Section 420 read with Section

120-B of IPC. Aggrieved by the same, the petitioners preferred respective

appeals against the aforesaid judgment passed by learned trial Court, which were dismissed and the conviction of the petitioners was upheld .

CONTENTIONS

6. Learned counsel for the petitioners contends that the learned Courts below have erred in rendering a judgment of conviction as the prosecution has miserably failed to prove the ingredients of the offence under Section 420 IPC. There is nothing on record to suggest that the petitioners had an intention to cheat since the beginning. Further, a perusal of the complaint would indicate that the complainant agreed to purchase the statue and the balance consideration amount was to be paid after extracting the gold from the same. In his cross-examination, PW3-Inderjit Babbar, complainant, has admitted that he was to pay the amount only after extracting the gold from the statue and not before that.

7. He further submits that mere allegations that petitioner-Santosh Chand Rahi approached the complainant to get the contents of the statue tested as it is suspected to be of gold does not amount to inducement to purchase it. The complainant himself showed the intention to purchase the statue after checking the gold dust. Moreover, the prosecution has failed to prove the case beyond reasonable doubt as the melted cut head of the statue was never produced before the Court or taken in possession. The FSL report (Ex. PL), prepared by Director (Physics), not a Chemistry expert, has also not been proved in accordance with law. The statements of the complainant and PW2-Manoranjan Manna are also completely contradictory.

8. *Per contra*, learned counsel for the U.T. contends that the learned trial Court has correctly appreciated the facts and material on record to record a guilty verdict, which has also been upheld by the learned lower Appellate Court. As such, interference by this Court is not warranted.

OBSERVATIONS AND ANALYSIS

9. Having heard learned counsel for the parties and after perusing the record with their able assistance, this Court deems it appropriate to analyse the ingredients of offence as defined under Section 420 IPC, which reads as follows:

“Section 420: Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

10. A two Judge bench of the Hon’ble Supreme Court in **Mariam Fasihuddin and another v. State by Adugodi Police Station and another**, speaking through Justice Surya Kant, has made the following observations:

“11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property.

There are, thus, three components of this offence, i.e.,

(i) the deception of any person,

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and

(iii) mens rea or dishonest intention of the accused at the time of making the inducement.

There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.”

11. Admittedly, petitioner-Suresh Chand Rahi was already known to PW3-complainant. The eye witness, PW2- Manoranjan Munnar, who worked as a goldsmith at the complainant's jewellery shop, has categorically deposed that the petitioners-accused came to the shop with the said statue to check its contents and the dust extracted from the statue was found to be gold, however, later on the statue was found to be made of brass. Not only did he identify the alleged gold statue but also specifically deposed that he was informed by the complainant that he had made the payment for the statue. As such, he entirely supports the prosecution case and any other discrepancies in his statement become irrelevant. Furthermore, when the FSL Report (Ex. PL) was tendered in evidence, no objections regarding its admissibility or request for retesting were raised. As such, the ingredients of the offence under Section 420 IPC are clearly made out and the learned counsel for the petitioners have not been able to indicate any perversity in the judgments rendered by the learned Courts below.

12. However, considering the fact that the FIR in the instant case was lodged in 1995 and the petitioners accused have been suffering the agony of trial for the last 29 years, this Court is of the considered view that the sentence imposed on the petitioners deserves to be modified to the custody already undergone by them. A two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by

evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

13. Further, a Co-ordinate bench of this Court has made the following observations in the case of **Raj Pal vs. State of Haryana, CRA-S-68-SB-2005**, decided on 28.04.2023 while modifying the quantum of sentence to period of custody already undergone:-

*“12. Be that as it may. The appellant – Raj Pal is on bail since the year 2005, in both the aforementioned cases. Thereafter appellant was never found indulged in any similar activity, which shows that with the passage of time, he has adopted the principles of reformatory theory, which otherwise also sends a direct message to reform oneself despite facing conviction in a criminal case(s). For coming to this conclusion, I draw support from the judgment of His Lordship V.R. Krishna Iyer, J., of Hon’ble Apex Court, rendered in case of **Mohammad Giasuddin vs. State of Andhra Pradesh, (1977) 3 SCC 287** wherein in para No. 5 it has been observed as under:-*

“5. If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.” (emphasis added)

13. In the case of **Satish @ Sabbe vs. State of Uttar Pradeshin SLP (Crl.) No. 7369 of 2019** decided on 30.09.2020, His Lordship Surya Kant, J., says as:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.” (emphasis added)

14. This Court also cannot ignore the observation made by their Lordships’ of Hon’ble Apex Court in the case of **Commissioner of Police and others vs. Sandeep Kumar, (2011) 4 SCC 644** which says:-

“9. The modern approach should be to reform a person instead of branding him as a criminal all his life”.

15. In the case of **Haribhau vs. State of Maharashtra, (2018) 18 SCC 43** Hon’ble Apex Court made observation in the case of an appeal which was preferred against an order of reduction of sentence ‘as already undergone’. Para 13 of the said judgment says as under:-

“13. In our considered opinion, firstly, taking into account that the appellant has already undergone one month’s jail sentence out of three months awarded to him, secondly, the fact that the incident in question is quite old and seems to have occurred at the spur of the moment, thirdly, the appellant has no criminal antecedent in his past life and lastly, he is not required in any other criminal case except the one in question which the appellant fairly did not deny having committed and rightly did not challenge his conviction, it is considered to be just and proper to alter the jail sentence awarded to the appellant from three months to the extent of period of one month which was already undergone by him and instead enhance the total fine amount awarded under different sections from Rs. 800 to Rs.15,000/- ”

14. As per the custody certificates produced by the learned State

counsel, details of custody period of the appellants are tabulated as under:-

Petitioner- Suresh Chand Rahi

Sr No.	Particulars	Period	Duration
1.	Custody under trial	12.06.1995 to 14.08.1995; 21.08.2008 to 21.08.2008	2 months 4 days
2.	Custody after conviction	22.08.2008 to 14.11.2008	2 months 24 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	2 months 24 days
5.	Actual undergone period	-	4 months 28 days
6.	Earned remission	-	-
7.	Total sentence including remission	-	4 months 28 days

Other Pending Cases:–

- i) FIR No.156 dated 14.08.2008 under Sections
420/467/468/471/506/507/120-B IPC (released on bail)
- ii) FIR No. 349 dated 22.11.2016 under Sections
147/149/332/353/427/448 IPC & Section 3 of Prevention of
Damage to Public Property Act, 1984 (released on bail)

Petitioner- Haidri Bagum

Sr No.	Particulars	Period	Duration
1.	Custody under trial	13.06.1995 to 11.07.1995; 21.08.2008 to 21.08.2008	1 month
2.	Custody after conviction	22.08.2008 to 26.10.2008	2 months 5 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	2 months 5 days
5.	Actual undergone period	-	3 months 5 days
6.	Earned remission	-	-
7.	Total sentence including remission	-	3 months 5 days

Other pending case:-

- i) FIR No.308 of 2005 under Sections 332/353 IPC (released on bail)

Petitoner- Itraj Khan

Sr No.	Particulars	Period	Duration
1.	Custody under trial	14.12.1995 to 15.12.1995	2 days
2.	Custody after conviction	22.08.2008 to 06.03.2009	6 months 13 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	6 months 13 days
5.	Actual undergone period	-	6 months 15 days
6.	Earned remission	-	1 month 16 days

CRR-1802-2008 &
CRR-2327-2008 &
CRR-870-2009102024:PHHC:032353

7.	Total sentence including remission	-	8 months 1 days
----	------------------------------------	---	-----------------

Petitioner- Santosh Kumar

Sr No.	Particulars	Period	Duration
Sentence already completed.			

CONCLUSION

15. As per their respective custody certificates, petitioner-Suresh Chand Rahi has undergone 4 months and 28 days of custody, petitioner Haidri Bagum has undergone 3 months and 5 days of custody, petitioner-Itraj Khan has undergone 8 months and 1 day of custody whereas petitioner-Santosh Kumar has already completed the sentence awarded to him in this case. However, petitioner-Suresh Chand Rahi is involved in two other cases but has been granted the concession of bail in both. Similarly, petitioner-Haidri Bagum is involved one other case in which she has been granted bail. Accordingly, this Court is of the opinion that ends of justice would be best met if the sentence of rigorous imprisonment awarded to the petitioners is reduced to the period of custody already undergone by them. However, since Santosh Kumar has already undergone the sentence awarded to him, this Court finds no reason to agitate legal proceedings qua him.

16. Consequently, the present revisions are disposed of in the following terms qua petitioners- Suresh Chand Rahi, Haidri Bagum and Itraj Khan:-

- (i) The conviction of the petitioners is upheld, however, the sentence awarded to them is modified to the period of sentence already undergone by them.
- (ii) The total amount of fine of Rs.4,000/- (Rs.1,000/- each) imposed upon the petitioners (except Santosh Kumar) in CRR 870-2009 namely is increased to Rs.30,000/- (Rs.10,000/- each). The petitioners except Petitioner Santosh Kumar are directed to deposit the amount of fine before the learned trial Court within one month from the date of receipt of certified copy of this order, failing which, this order shall be liable to variance.

17. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

04.03.2024
Rajeev(rvs)

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>