

2024:PHHC:154704



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

**CRR-1528-2016
RESERVED ON:30.07.2024
PRONOUNCED ON:29.10.2024**

KULBEET SINGH

.....PETITIONER

VERSUS

NIRMAL SINGH AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Saurav, Advocate for
Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

Mr. Vikrampreet Arora, Advocate for respondent No.1

SANDEEP MOUDGIL, J

1. Relief sought:-

The instant petition invoking the revisional jurisdiction of this Court under Section 401 Cr.P.C., came up for hearing whereby the judgment of conviction passed by Judicial Magistrate 1st Class dated 06.08.2014 along-with order of sentence as well as judgment dated 01.03.2016 passed by Lower Appellate Court upholding the aforesaid conviction vide which two years RI has been awarded for an offence under Section 420 IPC along-with fine of Rs.3,000/- has been assailed. The moot point raised before this Court on behalf of the petitioner is two fold other than the arguments on factual aspects i.e., the complaint (Annexure A-1) was filed after more than 5 years, which is alleged to have gone unexplained and the police

after conducting investigation found the allegation to be false and consigned the complaint to the record room, but the trial Court has gone to award conviction without appreciating these two aspects.

2. Facts:-

The factual matrix can be culled out in short to record that complainant Nirmal Singh filed a complaint against Kulbeet Singh-petitioner for commissioning of offence under Section 420 IPC accusing the petitioner of not fulfilling the promise to send the complainant abroad i.e., to Malasiya for which Rs.98,000/- was charges by the petitioner. The said amount has been paid in the presence of three witnesses namely Sat Parkash, Gurpreet Singh and Bikar Singh.

The case set up on behalf of the complainant that the petitioner neither facilitated the complainant's departure to Malasiya nor he returned the amount in full though, admitted his fault and paid back partly Rs.40,000/- after 1 ½ years. It is in this background a complaint was lodged with the police but no action was taken on that complaint as is the case of the complainant and, therefore, after recording preliminary evidence, the trial Court summoned the accused/petitioner to face trial for an offence under Section 420 of IPC. In the pre-charge evidence, the complainant as CW-1 deposed on the lines reiterating the facts of complaint, which was duly supported by the three witnesses namely Sat Parkash, Gurpreet Singh, Bikar Singh. The accused-petitioner was charge-sheeted for the said offence, who pleaded not guilty and claimed trial.

The trial Court hold the accused guilty for an offence under Section 420 of IPC vide its judgment dated 06.08.2014 observing that all the essential ingredients of Section 420 of IPC, but at the same time observed that at the time of making inducement no cogent evidence to show fraudulent intention could be

produced, but is assessed by circumstantial evidence. It is on that basis the case of the complainant was found to have been proved beyond the shadow of reasonable doubt and thereafter by a separate order of even date awarded sentence for a period of two years RI alongwith fine of Rs.3,000/- for the offence under Section 420 IPC.

The petitioner/convict filed an appeal before the Additional Sessions Judge, Patiala against the judgment of conviction as well as order of sentence, which was also dismissed on 01.03.2016

It is in this backdrop of the aforesaid sequence of litigation, the present petition came to be filed, wherein sentence was ordered to be suspended during the pendency of present revision petition, subject to furnishing personal bond in a sum of Rs.25,000/- with one surety of the like amount to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Patiala.

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner before this Court argues for setting aside the conviction while submitting that it is only the oral evidence qua the alleged payment made by the complainant to the petitioner on 13.01.2005 for Rs.98,000/- out of which allegedly Rs.40,000/- was returned after 1 ½ years as and when the complainant demanded his money back whereas the instant complaint came to be filed on 10.03.2010 i.e., after more than five years from the alleged date of payment i.e., 13.01.2005, therefore, is barred by law of limitation.

Mr. Gautam Dutt, learned Advocate has further contended that the eye witnesses namely Kulbeet Singh, Bikar Singh, Gurpreet Singh and Sat Parkash CW-1, CW-2, CW-3 & CW-4 respectively as examined by the complainant are interested parties as there is a party faction between them inasmuch as the

complainant as well as the petitioner belong to the same village and this is political rivalry out of part faction. It is also submitted that the trial Court did not appreciate the statement got recorded under Section 313 Cr.P.C., whereby the petitioner categorically stated the matter to be of civil nature and above all lack of any cogent evidence to prove the payment of Rs.98,000/-, makes the whole story doubtful for which the petitioner is entitled to get benefit and deserves to be acquitted on that ground alone.

Even the date, time and place qua the alleged returned amount of Rs.40,000/- by the petitioner to the complainant has not been brought on record, but accepting the oral evidence led by the complainant as a gossiple truth, the trial Court as well as the Lower Appellate Court stated to have committed grave illegality while attracting Section 420 IPC.

Mr. Dutt also asserts that the Courts below have failed to consider the legal aspect that Section 420 IPC would be attracted only when the amount in question is proved to have exchanged hands between the complainant and the petitioner and the case needs to be examined within the four corners of Section 406 as well since both the provisions of IPC are to be read in consonance. It is vehemently argued to conclude that in any case, the trial Court ought to have examined the fact of admission on behalf of the complainant that the petitioner has filed a suit for recovery against him, wherein the judgment and decree stands proved on record as Ex. C1 and C2 has also been over-looked.

On behalf of respondent/complainant

It is argued on behalf of the respondent/complainant that Nirmal Singh complainant/CW-1, Bikar Singh-CW-2, Gurpreet Singh-CW-3 and Sat Parkash CW-4 are consistent in their deposition while appearing in the witness box and their credibility could not be shattered. The facts involved in the instant complaint qua

payment of Rs.98,000/- having paid on 13.01.2055 and failure of petitioner-accused to send the complainant to Malasiya stands established without any doubt and as such further in the light of admission to the fact that he has returned Rs.40,000/- to the complainant after 1 ½ years to be calculated from 13.01.2005 are sufficient enough to hold the petitioner guilty and therefore, the judgment of conviction and order of sentence passed by the trial Court dated 06.08.2014 which was upheld by the Lower Appellate Court vide judgment dated 01.03.2016 is just legal and fair. Therefore he submitted for dismissal of the present petition.

5. Discussions:-

After having heard, learned counsel for the parties and examination of documents on record, the conviction under Section 420 IPC for a period of 2 years RI alongwith fine of Rs.3,000/- has been awarded holding the petitioner guilty on account of having duped the respondent/complainant for an amount of Rs.98,000/- with the promise to send him abroad (Malasiya) but actually did not fulfill his promise. The averments made by the respondent/complainant have the support of witnesses CW-2, CW-3 and CW-4 namely Bikar Singh, Gurpreet Singh and Sat Parkash respectively.

The said conviction has been assailed by the convict/petitioner on the account that firstly the whole story in the private company is purely based on oral evidence, which is not trustworthy as all the parties to the present lis including the witnesses are resident of the same village and the petitioner has alleged rivalry among themselves on account of different political alliance apart from the complainant being bad on account of delay and latches, as the payment is alleged to have been made on 13.01.2005 and the instant complaint was lodged on 10.03.2010 i.e., after more than 5 years.

It would be imperative on this Court firstly to examine the question of limitation for filing of complaint before the Judicial Magistrate 1st Class before going to other questions raised by the petitioner/accused and in that endeavour, Section 468 of Cr.P.C., needs to have a look, which reads as under:-

468 Bar to taking cognizance after lapse of the period of limitation:-

Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only;*
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

A perusal of the above provision shows that there is no doubt that a bar has been put in place for taking cognizance once the period of limitation has crossed, which has dealt with the offences punishable either with fine only or with a stipulated period of limitation by 6 months, in advances, where the punishment is not to exceed one year, the limitation is also for one year and three years is the limitation prescribed for the offences punishable with imprisonment for a term exceeding one year, but not exceeding three years.

In the instant case, the punishment prescribed for the offences under Section 420 is imprisonment of either description for a term, which extend to 7

years, and shall also be liable to fine as has been envisaged under Section 420 of IPC, 1860.

Accordingly, there is no limitation provided in the statute for institution of a complaint, wherein the offences are punishable with imprisonment of either description of more than three years and as such this question will not be attracted for an offence for which the petitioner has been convicted. Accordingly on the question of limitation, this petition fails.

Now coming to the next question as to whether the offence under Section 420 is made out, the ingredients of Section cheating and dishonestly inducing delivery of property has been made an offence under the following terms:-

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.

“(i) there should be fraudulent or dishonest inducement of a person by deceiving him,

(ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property”

The Apex Court in ***Prof R.K. Vijayasathy and another vs. Sudha***

Seetharam and another; (2019) 16 SCC 739 wherein, it was held that the condition

necessary to an act to constitute an offence under Section 415 IPC is that there was dishonest inducement by the accused and also to the effect where the ingredients required to constitute a criminal offence are not made out from a bare reading of a complaint the continuation of criminal proceedings is an abuse of process of law.

6. Decisions:-

After giving a considerable thought to the discussion and analytical testing of the material before this Court, the petitioner/accused has returned the amount of Rs.43,000/- after 1 ½ years, which fact has gone unrebutted before the trial Court in evidence meaning thereby the promise was made by the petitioner/accused, which is duly supported by though oral evidence in the form of witnesses CW-2, CW-3 and CW-4 namely Bikar Singh, Gurpreet Singh and Sat Parkash respectively, but at the same time, the petitioner/accused has also failed to establish any vengeance or rivalry among the parties by way of direct or indirect evidence whatsoever. This Court is also sanguine of the fact that normally in such like cases no documentation or written pro note/agreement is prepared for transaction of money especially in the nature of cash, but the intent of the petitioner/accused is evident that despite having received the amount from the complainant/respondent, he never made any effort for making arrangements to send him abroad i.e., to Malasiya and rather after 1 ½ years, though returned the some amount i.e., 40,000/-. This very fact is sufficient enough for this Court to infer that there was inducement with dishonest intent making the respondent/complainant to part away with money, who has been rightly held guilty by the trial Court for commissioning of the offence under Section 420 IPC.

Hence, this Court does not warrant any interference in the judgment of conviction alongwith order of sentence dated 06.08.2014, which was also rightly

upheld by the Lower Appellate Court vide judgment dated 01.03.2016, therefore, the present petition stands dismissed being devoid of any merits.

29.10.2024

Meenu

(SANDEEP MOUDGIL)
JUDGE

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