

2024:PHHC:109601



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

241	CRR-900 of 2016	
	Date of Decision: 23.07.2024	
Balkar Singh	Versus	...Petitioner
State of Punjab and others		... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Dheeraj Kumar, Advocate for
Mr. H.P.S. Ishar, Advocate, for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision against the impugned judgment dated 23.12.2015 passed by the Court of Additional Sessions Judge, Sangrur and judgment dated 01.02.2014 passed by the Sub-Divisional Judicial Magistrate, Moonak, whereby, the respondents were ordered to be acquitted.
2. The FIR in the present case was registered on the basis of a complaint moved by the petitioner to the SSP, Sangrur, against Chamkaur Singh and Boota Singh. As per him, he was an agriculturist and Chamkaur Singh and Boota Singh were known to him since long as the petitioner was having the family of his maternal grandfather at village Khokhar and the accused were having their houses near the

house of his maternal grand-father and both the families had good relations with each other. The petitioner reposed faith in the respondent/accused. Tarsem Singh brother of Chamkaur Singh was abroad. The respondent/accused had suggested the petitioner to go abroad and in January, 2004, Chamkaur Singh and Boota Singh, both respondents No. 2 and 3 came to the house of the petitioner and asked him to pay a sum of Rs. 8 lacs and they would arrange a visa and permanent job in the United States of America. The petitioner believed them and promised that in case the work was completed, he would pay them the money. The petitioner arranged a sum of Rs. 2 lacs on 09.03.2004 and called the accused at his village. Both the accused came on a motorcycle at village Burgan and received Rs. 2 lacs from the petitioner and assured that within no time they would get the visa and would make preparations to send him abroad. They also asked the petitioner to arrange the remaining payment. Thereafter, on 28.5.2004, respondents No. 2 and 3 visited the petitioner at his village Bugran and asked him that necessary work to send him abroad has been completed and for the purpose of ticket, he would have to pay Rs. 30,000/- and same was paid by petitioner on 28.5.2004 to them. Respondents No. 2 and 3 also told him to arrange remaining amount immediately and asked to reach at village Khokhar on 11.7.2004 along with money. Thereupon, petitioner reached at village Khokhar in the house of respondents No. 2 and 3 along with Rs.5,30,000/- and he handed over the said amount to them.

Respondents No. 2 and 3 showed him a passport which was bearing some stamps and told him that his visa has been confirmed and shortly he would be sent to America. Thereafter, on 14.7.2004, the accused persons took the petitioner and reached at Delhi, where they kept him in a hotel and Chamkaur Singh respondent No. 2 was also with him. On 22.7.2004, both the accused took him at the Airport, where after completion of paper work, they got him sit in the plane and stated him that the plane would go to America, where their companions would receive him and would take care of him. The petitioner being illiterate person believed the talks of respondents No. 2 and 3 and kept doing as stated by the them. Thereafter, the said plane landed at Thailand and the petitioner later on knew that the said place was Thailand, where some persons who were stating themselves to be the persons of Chamkaur Singh, respondent No. 2, kept the petitioner at Thailand for about 6 months. After that the said persons took him at Jakarta where he remained about 4 months and they treated him rudely. After about 10 months, petitioner made contact between Chamkaur Singh and his companions and asked them to bring him back to India, whereupon Chamkaur Singh asked the family of petitioner to pay him Rs. 45,000/- as expenses to be incurred on the return of petitioner. Upon this, wife of petitioner arranged Rs. 45,000/- and handed over to Chamkaur Singh and on its basis, they brought petitioner to India and he was left at Delhi and, thereafter, petitioner miserably reached at his village. It was claimed

that respondents No. 2 and 3 have cheated the petitioner for sending him abroad and misappropriated an amount of Rs. 8,05,000/-. So the necessary action may be taken against them.

3. After the completion of the investigation, the challan was presented before the Area Magistrate. After completing the formalities under Section 207 Cr.P.C., the trial Court charge sheeted the respondent over the offence punishable under Section 420 IPC, to which, they pleaded not guilty and claimed trial.

4. In support of the charge, the prosecution examined 10 witnesses, namely, Balkar Singh as PW-1, retired A.S.I Bhupinder Singh as PW- 2, Kiranjit Kaur as PW-3, Gurmail Singh as PW-4, H.C Prem Singh as PW-5, S.I Sukhdev Singh as PW-6, Kulwinder Singh as PW7, Jagdev Singh as PW-8, Sham Lal as PW-9 and Jeet Singh as PW-10 and the evidence was closed by the Court.

5. The incriminating material was put to the respondents in their statement under Section 313 Cr.P.C. and they were given chance to prove their defence. However, no defence witness was examined by them.

6. Learned counsel for the petitioner submits that the impugned judgments are based on the misappreciation of the evidence and the settled law. In fact, the petitioner had believed the words of the respondents and had paid a sum of Rs. 7.60 lacs to them for sending him abroad. The petitioner was called to Delhi from there he was sent to Thailand, where he spent six months. Thereafter, he was

taken to Indonasia and the amount was taken away by the respondents. Learned counsel further contends that in such type of unauthorized travel agents, there is hardly any written proof with regard to the payment. However, from the oral testimonies of witnesses, it was amply proved that the respondents had committed the offence. The petitioner is an illiterate person and was not in a position to read the boarding pass. Consequently, both the Courts had adopted a hypertechnical approach. Still further, the trial Court as well as the appellate Court failed to appreciate that the petitioner had appeared after a gap of more than six years and such discrepancies in his statement were bound to occur. However, by taking cognizance of minor inconsistencies appearing in his testimony, respondents have been wrongly acquitted by the trial Court as well as appellate Court.

7. I have heard learned counsel for the parties and perused the record.

8. While discussing the scope of interference by the Appellate Court, while dealing with the judgment of acquittal, the Hon'ble Supreme Court held in the matter of **Bhaskar Rao and others Vs. State of Maharashtra AIR 2018 SC 2222:2018 (5) RCR (Criminal 288)** as follows:-

“14. As the trial Court and High Court, having appreciated the evidence on record has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of

appreciating the evidence at the appellate stage, we need to keep in mind the views of this Court as expressed in Tota Singh and Anr. Vs. State of Punjab, 1987 (2) RCR (Criminal) 35:1987 CriLJ 974.

The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW-2 and PW-6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such re-appreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a re-appreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such, which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse: Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a

view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

9. In **Ramesh Babulal Doshi v. State of Gujarat, 1997(3)**

RCR (Criminal) 62: 1996 CrilJ 2867, this Court observed as under:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

10. In the present case, the main allegations against the respondents was that there was a false representation by the respondents that they had the intention to cheat the petitioner at the time of making false promise. Still further, it was alleged that the petitioner had paid a sum of Rs. 7.60 lacs in total to the respondents and, thereafter, the respondents did not send him to America. However, the petitioner completely failed to prove that the

respondents had induced him to part with an amount of Rs. 7.60 lacs. There is neither any role nor any writing with regard to the payment to the respondents. Still further, there was no documentary evidence to indicate that the amount of Rs.7.60 lacs was paid by the petitioner to the respondents. Consequently, neither any evidence with regard to the inducement by the accused was led nor the prosecution could place on record any documentary evidence to prove the fact of payment to the respondents. Still further, the trial Court has taken into consideration the various contradictions, which are appearing in the testimonies of PW1 Balkar Singh, PW3 Karanjit Kaur, PW4 Gurmail Singh and PW8 Jagdev Singh. All the witnesses had stated contradictory facts with regard to meeting the respondents. Still further, the prosecution could not lead any evidence to show that the respondents were involved in the business of travel agency and they had sent the petitioner abroad. It was also alleged that PW1 Balkar Singh was made to sit in a Hotel at Karol Bagh, New Delhi and the entire arrangement for stay was made by Jaswant and Sagha Malai. However, no evidence was led in this regard. Neither the record of the hotel had been summoned nor the connection with Jaswant and Sagha Malai could be established by the prosecution by producing evidence.

11. In view of the above discussion, the findings recorded by the Courts are based on correct appreciation of evidence and settled law and the prosecution has miserably failed to prove the charge against the respondents beyond the shadow of reasonable doubt. Even

otherwise, I have gone through the findings recorded by the appellate Court as well as trial Court and finding no merits, the present revision is ordered to be dismissed.

23.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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