



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1834-2018 (O&M)
Reserved on : 01.05.2024
Pronounced on : 29.07.2024

Anil Kumar Petitioner

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.P. Laler, Advocate and
Mr. Shobham Saroha, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. In the present revision petition, challenge is to the judgment dated 06.03.2018 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby the appeal preferred by the petitioner against the judgment of conviction dated 10.03.2011 and order of sentence dated 16.03.2011 passed by Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri has been dismissed.
2. Petitioner was booked in FIR No.256 dated 08.09.1999 and has been convicted for offences punishable under Sections 403, 467, 468, 471 and 120-B of IPC and sentenced as under:-

Section (IPC)	Rigorous Imprisonment	Fine (in Rs.)	In default of payment of fine (rigorous imprisonment)
403	02 years	2000	06 months
467	05 years	3000	01 year
468	05 years	3000	01 year

471	05 years	3000	01 year
120-B	05 years	3000	01 year

3. The judgment of conviction and order of sentence stands affirmed by Sessions Court.

4. FIR was registered on complaint dated 08.09.1999 made by B.S. Kanchan, Branch Manager, Life Insurance Corporation, Jagadhri. As per the information supplied by the complainant in July 1999, petitioner-accused who was working as LIC agent with Branch Office, Jagadhri submitted documents for payment of Rs.6250/- as survival benefit of policy no.170173206 issued in the name of Kamlesh Kumari Sood & Co. While payment was being processed, Branch Manager Jagadhri noticed that the policy was transferred from Branch Office, Yamuna Nagar on 24.12.1998. Query was raised as to why the said payment of Rs.6250/- was not made to the policy holder on 02.04.1998. It was on query discovered that the docket of policy was missing and policy stood lapsed on account of non-payment of first premium way back in the year 1993 and no payment was due to the policy holder. When online status of the policy was checked, it was found that the same was showing unpaid premium due on April, 1999 and the policy was in vogue. Earlier agent code was 2081-162 which was changed to 10088-162 i.e. the code of Anil Kumar, Agent-the petitioner. It is being claimed that it was found that the docket of the policy was stolen by the petitioner from Branch Office, Yamuna Nagar and has been thereafter incorporated online in Branch Office, Jagadhri on 24.12.1998 as a mater transfer from Branch Office, Yamuna Nagar. On suspicion, Anil Kumar-the petitioner was questioned. He admitted in his own writing



that he has misused the password of S.S. Labana, AAO. A detailed and thorough enquiry was conducted and it was discovered that the petitioner pirated number of lapsed policies by changing their status as new masters. He opened account in the name of Rajinder Kumar and Pardeep Kumar with Union Bank of India, Bank of India and Post Office impersonating them affixing photograph of his own father Shanti Parkash. He encashed those amounts by using those accounts. It was further found that the accused-Anil Kumar raised loans misusing the policies in the name of Pardeep Kumar, his brother Rajinder Kumar and in all committed a fraud of approximately 17.76 lakhs. Petitioner was tried alongwith Sushil Kumar, Anita Rani, Shanti Parkash (his father), Inderjit Singh and Vipin Kumar.

5. During the course of trial, prosecution produced documentary as well as ocular evidence to prove the guilt of the petitioner. Accused Vinay Kumar, Inderjit Singh, Anita Rani and Sushil Kumar were ordered to be acquitted. So far as accused Anil Kumar and Shanti Parkash are concerned, Trial Court held that there was enough evidence on record to prove that Anil Kumar converted lapsed policies for his own use by forging the same in fraudulent manner and further held that his connivance with Shanti Parkash with respect to impersonation of Pardeep Kumar and Rajinder Kumar by operating bank accounts in their names also stood proved. Petitioner-Anil Kumar was held guilty for offences punishable under Sections 403, 467, 468 471 and 120-B of IPC as stated hereinabove, whereas Shanti Parkash was held guilty qua offences punishable under Sections 419 and 120-B of IPC and sentenced as under:-



Section (IPC)	Rigorous Imprisonment	Fine (in Rs.)	In default of payment of fine (rigorous imprisonment)
419	02 years	2000	06 months
120-B	02 years	2000	06 months

6. The aforesaid findings stand affirmed by the Appellate Court. Counsel appearing for the petitioner while arguing the revision petition has tried to persuade this Court to re-appreciate the evidence on record. On being asked about the legal infirmity on the record, he claims that some of the witnesses were examined by the prosecution, but no opportunity was granted to the petitioner to cross-examine them and thus submits that whole of the trial is vitiated on the said ground and the conviction cannot sustain. On being asked to refer from the record, counsel for the petitioner has drawn attention of this Court to the following statement made by Rohtash, Civil Ahlmad summoned from the Court of Civil Judge (Sr. Div.), Jagadhri:-

“Statement of Shri Rohtash, Civil Ahlmad, c/o learned Civil Judge (SD), Jagadhri.

On S.A.

Stated that I have brought summoned file of LIC vs. Anil Kumar. I have seen document Ex.P-5 on the file of civil case whose copies Ex.P-X. I have seen Ex.P-1 of the summoned file. Copy thereof is Ex.P-Y.

R.O & AC.
Rohtaksh

ACJM, JD
16.11.2009



Statement of Shri Rohtash, Civil Ahlmed,
c/o learned Civil Judge (SD), Jagadhri.

Stated that I have received back
original file.

R.O & AC.
Rohtaksh

ACJM”

7. From the statement of Rohtash, it is evident that he is not a witness, he has not been given any witness number. He was summoned only to produce document. Provision as contained under Section 139 of the Indian Evidence Act, 1872 answers the argument raised by counsel for the petitioner.

8. Section 139 of the Indian Evidence Act, 1872 reads as under:-

“139. Cross-examination of person called to produce a document.

A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.”

9. Thus as per bare provision, a person does not become a witness merely by producing a document. Till he becomes witness, he cannot be cross examined. In view of above, the plea raised by counsel for the petitioner sans merit and is hereby rejected.

10. From the records of the case, it has evident that both the Courts below have found that there was overwhelming evidence to prove that the petitioner being LIC agent, utilized lapsed policies for his own use in fraudulent manner. Bank accounts were opened in the name of policy holders, namely, Pardeep Kumar and Rajinder Kumar by the



petitioner utilizing photograph of his father. Loan was raised on the lapsed policies which was got transferred to the said account from where the same was siphoned off.

11. In view thereof, this Court does not find any reason to interfere in well reasoned finding of facts recorded by the Courts below being cautious of the extent of jurisdiction to be exercised by the revisional Court which stand explained by Supreme Court in ***Bindeshwari Prasad Singh @ B.P. Singh and others vs. State of Bihar (Now Jharkhand) and another, 2002 AIR (SC) 2907***, wherein it has been held that:-

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except



in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 Supreme Court 196 : D. Stephens v. Nosibolla; AIR 1962 Supreme Court 1788 : K.C. Reddy v. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others v. Ramdeo Ram; AIR 1975 Supreme Court 1854 : Patakalapati Narayana Gajapathi Raju and others v. Bonapalli Peda Appadu and another and AIR 1968 Supreme Court 707 : Mahendra Pratap Singh v. Sarju Singh).”

12. The last plea raised by counsel for the petitioner relates to reducing the sentence claiming that the same was grossly disproportionate to the charges levelled. It has been further contended that the petitioner is a 63 year old chronic heart patient and is regularly undergoing treatment apart from having been operated for the same. Petitioner has been granted substantive sentence of 05 years. Out of which he has already undergone 02 years, 02 months and 16 days before the sentence was suspended by this Court vide order dated



protracted trial for last 25 years. During these 25 years, almost for 23 years, he remained on bail. There is no allegation that he ever misused the concession of bail or that he repeated the offence. Supreme Court in the case of ***Suresh Hingorani vs. State of Haryana (2013) 9 SCC 454*** in somewhat similar circumstances took note of mitigating circumstances to reduce the sentence observing as under:-

“14. Learned counsel for the appellant submitted that the appellant has undergone imprisonment for 20 months. He is about 59 years of age and is suffering from osteoarthritis. The affidavit of the appellant along with the medical report is on record. Counsel pointed out that the appellant has suffered a fracture in the distal femur while in custody and his left limb has been shortened by 1½ cm due to operation. He has also suffered a firearm injury in his left knee. The medical record shows that his condition is worsening due to advancing osteoarthritis changes. Counsel urged that in the circumstances, this court may take a kindly view of the matter. He submitted that the sentence already undergone by the appellant may be treated as sentence for the offences for which he has been convicted.

15. Though we are of the confirmed opinion that the appellant has rightly been convicted for offences under Sections 419 and 467 of the IPC, having perused the appellant's affidavit and medical papers, which are annexed to it, we are of opinion that in the peculiar facts and circumstances of the case so far as sentence is concerned, his case deserves to be dealt with sympathetically. We have also taken note of the fact that the complainant is not interested in prosecuting the case and that neither the appellant has received any monetary benefit nor PW-8



Gurdarshan Singh has suffered any loss. Though in law, these circumstances will not help the appellant, for the purposes of considering the aspect of sentence in the peculiar facts of this case, these would be mitigating circumstances. The offence, however, is grave and, therefore, while treating sentence undergone by the appellant as sentence for the offences for which he is convicted, we deem it appropriate to impose on him a fine of Rs.50,000/-.

16. Hence, the following order: the conviction of the appellant for offences under Sections 419 and 467 of the IPC is confirmed. The appellant has so far spent 20 months in jail. In the facts of the case the period already undergone by him is directed to be treated as sentence for the offences under Sections 419 and 467 of the IPC. The order of sentence is modified to this extent. In addition, the appellant is directed to pay a fine of Rs.50,000/-. The appellant shall deposit the fine amount with the Registrar General of Punjab & Haryana High Court. Such deposit shall be made within a period of one month from today. The appellant is on bail. On such deposit being made, the appellant's bail bond shall stand discharged. Needless to say that if the appellant does not deposit the said amount as directed, the bail bond of the appellant shall stand cancelled and he shall be taken in custody to serve out the remaining sentence as per the impugned order.”

13. The conviction of the petitioner is ordered to be confirmed. Being guided by the aforesaid observations made by the Supreme Court and taking into account mitigating circumstances, the sentence is ordered to be modified. The petitioner has already spent around 27 months in jail. Period already undergone by him is ordered to be treated



as sentence for the offences he has been convicted. The order of sentence is modified to the aforesaid extent and he is further directed to pay a fine of Rs.1 lakh (Rupees One lakh only). The said fine be deposited with Registrar General of Punjab and Haryana High Court. The same to be made within a period of 01 month from the date of the order. On deposit made by the petitioner, his bail bonds shall stand discharged. In case the petitioner fails to abide by the aforesaid directions, his bail bonds shall stand cancelled and he shall be taken in custody to serve remaining sentence as per the judgment passed by the Courts below.

- 14. Disposed off, in the aforesaid terms.
- 15. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

29.07.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No