



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

261

CRR-3048-2018
Date of Decision: 04.12.2024

PARVINDER SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Khushaldeep Kaur Manchanda, Advocate for
Mr. Ankur Mittal, Advocate
for the petitioner.

Mr. Jasgit Singh Rattu, DAG, Punjab.

Mr. G.N.Malik, Advocate for
Respondents No. 2 and 3.

SANDEEP MOUDGIL, J

1. By this revision petition filed under Section 401 of the Code of Criminal Procedure, against the impugned judgment dated 24.01.2017 passed by the learned Sub Divisional Judicial Magistrate, Phillaur and the impugned judgment dated 24.05.2018 of the learned Additional Sessions Judge, Jalandhar, the petitioner has prayed for setting aside both the judgments, vide which the accused/respondents have been acquitted by both the Courts in the case arising out of FIR No.209 dated 02.11.2010 under Section 406, 420, 468, 471 of the Indian Penal Code, registered at Police Station Phillaur, District Jalandhar.



2. It is contended by the learned counsel for the petitioner that the learned courts have completely erred in acquitting the respondents/accused in the present case as a clear cut case of cheating and fabrication of documents is made out against the accused/ respondents. The learned Courts below have misread the evidence and material on record. The prosecution has examined as many as 10 witnesses on its behalf, however, the learned Courts below have completely ignored the testimony of all the witnesses and acquitted the accused/respondents by over-looking their evidence. The learned Courts below have ignored the Panchayati Compromise also with respect to return of money or in the alternative, to get back the Canadian Visa.

3. It is further argued by the learned counsel for the petitioner that the learned Courts below have failed to consider the testimony of PW-1 Joga Singh (father of the complainant); PW-2 Kulbir Singh; PW-3 Joginder Singh; PW-4 Parvinder Singh (complainant) and other witnesses who have given their evidence together with documentary evidence and also did not appreciate the report of Deputy Superintendent of Police (Detective) Jalandhar (Rural) which is against the accused persons and also ignored CD which was duly proved according to law and was exhibited without any objection. As such, there is complete misreading of the prosecution evidence and error in fact and law in the judgments of both the Courts below which renders both the judgments liable to be set aside and accordingly, it is prayed that the judgements of both the Courts below may kindly be set aside and the accused/respondents may be convicted and sentenced according to law and gravity of offence.

4. Learned State Counsel has submitted that the FIR was registered after holding an enquiry in the matter which was conducted by the Deputy



Superintendent of Police, which was placed before this Hon'ble Court, which is also a part of the prosecution case in the anticipatory bail application but the complainant did not get the voice recording tested/verified and despite availing ample opportunities, the complainant did not give any reason as to why the additional evidence was not brought on record. As such, the complainant has failed to prove its case before the learned Courts below.

5. It is argued on behalf of the respondents No.2 & 3 that the learned courts below have completely appreciated the prosecution evidence and examined the same in its true sense and perspectivity. The prosecutions much less the complainant has failed to prove its case beyond the shadow of reasonable doubt and the learned Courts below have by considering the same acquitted the respondents. The learned Courts below have gone through the prosecution evidence completely and found that there is no evidence of dishonest inducement against the accused persons. It is further argued that the prosecution witnesses did not support the complainant story and as such, the learned Courts below have rightly acquitted the respondents No.2 & 3. Thus, no error can be found in the judgments of both the Courts below and the present revision petition is, in this view of the matter, is liable to be dismissed.

6. Heard learned counsel for the parties and perused case file with their able assistance.

7. The allegations of the petitioner, against Amrit Pal and his mother Sita Devi in the FIR are for receiving the amount of Rs.8,80,000/- for sending him abroad. Amrit Pal visited his house in village Mandi, Tehsil Phillaur, District Jalandhar, who gave him the assurance that he can send him abroad for which Rs.8,80,000/- will have to be paid. It is further alleged by the petitioner



that his parents were impressed from the talk of Amrit Pal and they agreed to send him abroad. Thereafter, on different dates the amount of Rs.8,80,000/- was paid by his parents between 23.11.2009 to 15.05.2010. It is further alleged that Amrit Pal and his mother were accompanied by agent Pavittar Singh on two occasions i.e. 12.05.2010 and 15.05.2010. Thereafter, visa was obtained and he was sent to Delhi where he was kept in a hotel for 20/22 days whereafter he came to know that his papers were fake and he returned to his village and demanded his money back but Pavittar Singh gave threats to him instead of returning the money. The petitioner further alleged that the matter was compromised before the Panchayat with Amrit Pal, who gave in writing either to return his money or to get him Canadian visa. As such he was cheated by these accused persons who now stands acquitted.

8. On going through the judgment of the learned trial Court (Sub Divisional Judicial Magistrate, Phillaur) it is seen that the evidence adduced by the prosecution was found insufficient to hold conviction of the accused persons. It is specifically mentioned that despite availing numerous opportunities by the prosecution to conclude its entire evidence, by way of issuance of summons and warrants through special messengers as well as through the office of SSP (Rural) Jalandhar, the prosecution failed to do so and ultimately, prosecution evidence was closed on 21.08.2015. The accused examined Resham Singh, Sarpanch, as DW-1, who deposed that he knows Pavittar Singh and his wife Harjit Kaur personally and they are agriculturist by profession and not travel agents and that no complaint has ever come before their Panchayat against the accused with regard to any travel agency.



9. It is otherwise surprising that the petitioner has made Amrit Pal and his mother Sita Devi accuse of taking money from his parents for sending him abroad, however, they have not been sent up to face trial by the police. In this regard, perusal of the record in hand makes it clear while referring to the application Ex.PA made to then SSP Jalandhar wherein petitioner did not name the accused person, rather stated before the SSP that it was one Amrit Pal who entered into an agreement for sending him abroad and thereafter he gave the entire money to the said Amrit Pal and his mother and that the petitioner did not name Pavittar Singh in the statement Ex.PA made to the police nor the name of Harjit Kaur wife of Pavittar Singh is there but while appearing in the witness box as PW-1, the petitioner has completely changed his version which casts doubt on the reliability of the prosecution version.

10. As such, there is no iota of evidence on record that the accused Pavittar Singh and his wife Harjit Kaur ever induced the petitioner- Parvinder Singh to send him abroad and according, there is no evidence on record to the effect that the accused persons prepared forged visa. However, the petitioner had himself exonerated Amrit Pal and his mother Sita Devi by submitting that all the transactions with Pavittar Singh had occurred in front of Amrit Pal and when he was not sent abroad, he asked Amrit Pal to join him in the legal battle for which Amrit Pal refused and out of this anguish, he moved the complaint levelling allegations against Amrit Pal. In this way, no fault can be found with the judgment of the learned trial Court in acquitting the respondents No.2 & 3.

11. However, on going through the judgment of the learned Appellate Court i.e. Additional Sessions Judge, Jalandhar, it is seen that the learned Appellate Court has observed that there is no allegation against the accused



/respondents for handing him over false visa nor any iota of evidence has been produced on record by the prosecution and the conversation allegedly recorded in CD which has been placed on record, is not found to be produced on record as per law as the person who prepared that CD has not been got examined by the prosecution. Petitioner has apparently recorded the conversation between him and accused and produced the CD and Memory Card having the said conversation but has not stated in his statement on oath as to how, when and in what manner he had recorded the conversation between them. On account of his failure to prove the CD and its placing on record in accordance with law, the question of getting the voice recording verified from an expert does not arise. Accordingly, the judgment of the learned trial Court was affirmed and the appeal was dismissed.

12. In “*State of Kerala v. Puttamana Illath Jathavedan Namboodiri (1999 (2) SCC 452)*” it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

13. While exercising revisional authority, the High court should borne in mind that unless the finding of the lower court is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored



or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with the decision in exercise of its revisional jurisdiction.

14. In view of what has been discussed hereinabove and the mandate in State of Kerela’s case(Supra), this Court is fully satisfied that the learned Courts below have not committed any error on fact and in law while recording their respective verdict to acquit the respondents No.2 & 3 of the charges against them.

15. Resultantly, the judgments of both the Courts below are upheld by this Court as well. The present revision petition being devoid of any merits accordingly fails and is hereby ordered to be dismissed.

(SANDEEP MOUDGIL)
JUDGE

04.12.2024
anuradha

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