



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

267 CRR 2038 of 2024 (O&M)
Date of Decision: 29.11.2024

Narender Sethi and another ...Petitioners
Versus
State of Haryana ... Respondent

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

Present : Mr. A.D.S. Sukhija, Advocate
for the petitioners.

Mr. Rajinder Kumar Banku, DAG, Haryana.

Mr. Krishan Singh, Advocate
for respondents No. 2 to 4.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present revision against the impugned judgment dated 03.10.2024 passed by the Court of Additional Sessions Judge, Yamuna Nagar and the impugned judgment of conviction dated 24.09.2018 and order of sentence dated 26.09.2018 passed by the Additional Chief Judicial Magistrate, Yamuna Nagar, whereby, the petitioners have been convicted for the offences punishable under Sections 420 and 120-B IPC and sentenced as follows:-

Sections		Imprisonment
420 IPC		The convicts to undergo rigorous

		<i>imprisonment for a period of five years and a fine of Rs.10,000/- each.</i>
120-B IPC		<i>The convicts to undergo rigorous imprisonment for a period of three years and a fine of Rs.5000/- each.</i>

2. As per the case of the prosecution, Ekta wife of Harsh Kumar lodged a complaint by alleging that Narender Sethi petitioner No. 1 was the owner of House No. C-3, 1599, Rama Colony, Jagadhri vide a Civil Court decree dated 30.04.2005. Out of the said area of house, petitioner No. 1 had already sold area measuring 60 sq. yards to Sumit Kumar son of Satish Ahuja in the year 2012 and remaining area measuring 134 Sq. yards was transferred by Narender Sethi to his son Nitin Sethi vide transfer deed No. 9108 dated 20.11.2015. Thereafter, Nitin Sethi petitioner No. 2 sold the said area measuring 134 square yards to complainant Ekta wife of Harsh Kumar, Monika wife of Sanjay Verma and Priyanka wife of Manoj Kumar for a valuable sale consideration of 31,25,000/- vide sale deed No.9368 dated 30-11-2015. It is further averred that at the time of selling the abovesaid property, both the accused assured the complainant party that the abovesaid property is free from all kinds of encumbrances etc. On 28.03.2017, the complainant party came to know from one Ravi Sethi son of Amarnath Sethi that the property purchased by complainant party is mortgaged with Punjab and Sind Bank, Branch

Saraswati School, Jagadhri, upon which the complainant party were astonished and enquired about the same and came to know that in the year 2010, petitioner No.1 had taken a loan for his firm M/s Satyug Traders from the bank after mortgaging the said property with the bank as security of loan amount vide mortgage deed No. 1438 dated 24.05.2010. Thereafter the complainant party approached Naresh Sethi, elder brother of accused petitioner No. 1 as Naresh Sethi is neighbour of the complainant party and he made a telephonic call to the petitioners, who assured that they would obtain the NOC from the bank within a period of one week, but to no avail. It is further maintained that on 04.04.2017, the complainant party along with Naresh Sethi went to Jai City where petitioners were residing, but they came to know that on 01.04.2017, the petitioners left the rented accommodation after loading their articles in a truck and their neighbours did not know anything about their whereabouts. As such the petitioners in criminal conspiracy with each other sold the property to the complainant party which was already under mortgage with the bank and hence they duped the complainant party by doing so and also committed criminal breach of trust by converting the sale consideration amount of 31,25,000/- of abovesaid property for their own use. With these broad allegations, the FIR was got registered by the complainant against the petitioners.

3. After the completion of the investigation, the challan was presented before the trial Court by the police. Finding a *prima facie* case, charge under Sections 406, 420 and 120-B IPC was ordered to be framed against the petitioners and they pleaded not guilty and claimed trial.

4. In support of the charge, the prosecution had examined 11 witnesses. PW1 Ekta complainant, proved her initial complaint Ex.PW1/A and the copy of the sale deed dated 30.11.2015, executed by petitioner No. 2 in favour of the complainant as Ex.PW1/B. PW2 Sanjay Verma supported the case of PW1 Ekta. The prosecution further examined Satish Ahuja as PW3, who stated that the plot in question was 194 square yards and out of this his son Sumit Ahuja had purchased 60 square yards from the petitioners vide sale deed dated 24.04.2012 Ex.PW3/A and at the time of execution of the sale deed, petitioners had assured him and his son Sumit that the said plot was free of all kinds of encumbrances. The accused had obtained loan from the bank by mortgaging the property in question with the bank, but the accused had concealed this fact and duped them also.

5. Manoj Kumar was examined as PW4, who supported the testimonies of PW1 and PW2. Sumit Ahuja PW5 also deposed on the similar lines to that of his father Satish Ahuja PW3. He deposed that he had purchased an area measuring 60 sq. yards from petitioners for a valuable sale consideration of Rs.3,31,500/- vide sale deed dated

24.04.2012 and remaining area of the plot in question measuring 134 square yards had been purchased by the complainant party for a valuable sale consideration of Rs. 31,25,000/-. He further deposed that at that time the petitioners had assured him that the said plot is free from all kinds of encumbrances, but later on they came to know that the petitioners have obtained loan from the bank by mortgaging the said plot with the bank, but the petitioners concealed this fact and duped them also and committed criminal breach of trust by using the sale consideration for their own use. He also moved an application Ex. PW5/A to the police for taking action against the petitioners.

6. PW6 Sandeep Saini, Clerk, DC Office, Yamuna Nagar brought the summoned record, i.e., application Ex.PW6/A, certified copy of sale deed Ex.PW1/B, certified copy of sale deed dated 24.04.2012 Ex.PW3/A and Ex.PW6/C, certified copy of transfer deed dated 20.11.2015 Ex.PW6/B, certified copy of mortgage deed dated 24.05.2010 Ex.PW6/C and seizure memo Ex.PW6/D. PW7 Head Constable Gurdayal Singh was examined as PW7, who was associated with the process of investigation and had proved the memos prepared during the investigation. PW8 SI Vijay Kumar had recorded the formal FIR Ex.PW8/A and endorsement thereon as Ex.PW8/B. ASI Rajiv Kumar was the Investigating Officer and proved the entire investigation. PW10 HC Balbir Singh remained associated in the investigation in the present case. Ms. Megha Sood,

Office of Punjab and Sindh Bank appeared as PW11 and on the application Ex.PW9/A, by the IO, she had supplied the documents to the police.

7. After the examination of all the witnesses, the statements of the petitioners under Sections 313 Cr.P.C. was recorded and they denied all the prosecution evidence and claimed that they had been falsely involved in the present case.

8. The defence examined two witnesses. DW1 Saravjot Singh, Assistant Manager, HDFC Bank produced the bank record and as per that on 01.10.2015 Ekta, Harsh Kumar, Priyanka, Manoj Kumar and Monika had obtained loan of 20 lakhs from their bank and he proved copy of application form as Ex.D1. He further deposed that bank had accepted the request of the applicants vide acceptance copy Ex.D2. He also proved field credit report as Ex.D3, promissory note Ex.D4, list of documents as Ex.D5, copy of agreement to sell dated 26.11.2015 as Ex.D6, valuation progress report as Ex.D7, legal opinion as Ex.D8 and maintained that all these documents are correct as per the record, which he has brought today in the court.

9. Shri Surjit Mehta, Advocate was examined as DW2, who deposed that he has brought the summoned record and proved the copy of agreement dated 24.04.2014 as Ex.D9, which had been executed in his presence between Narender Kumar and Bhupinder Singh, which has been entered in his register at Serial Number

446/2014. He also proved agreement dated 12.05.2014 as Ex.D10, which has been entered in his register at Serial Number 533/2014. He also proved cancellation agreement dated 12.05.2014 as Ex.D11.

10. I have heard learned counsel for the parties and perused the record with their assistance.

11. At the outset, learned counsel for the petitioners contends that he does not wish to challenge the judgment of conviction, however, some leniency may be shown, while awarding the sentence to both the petitioners. He further contends that both the petitioners are father and son and both of them are in custody since long time. Even, Narender Sethi petitioner No. 1 is a senior citizen and is not maintaining good health, which is apparent from the medical record (Annexure A-1). Still further, the petitioners have returned a sum of Rs. 5 lacs each to Ms. Ekta respondent No. 2/complainant, Monika respondent No.3 and Priyanka respondent No. 4 in the present case vide three demand drafts dated 11.10.2024. Thus, the sentence imposed on the petitioners may be reduced to the period already undergone by them.

12. On the other hand, learned counsel appearing on behalf of respondents No. 2 to 4/complainants submits that the petitioners had cheated the respondents No. 2 to 4 and both do not deserve any leniency and the revision may be ordered to be dismissed.

13. In the present case, there was sufficient evidence to show that the petitioners had taken a loan of Rs. 15 lacs for his firm M/s Satyug Traders from Punjab and Sindh Bank, vide loan documents Ex.PW9/B after lending the entire plot, i.e., 194 square yards to the bank as a security towards loan. Petitioner No. 2 Rajiv Chadha and Manju etc., stood as guarantors. Thereafter, out of total area of 194 square yards, the petitioner No. 1 sold area measuring 60 yards to Sumit Kumar vide sale deed Ex.PW3/A for a sale consideration of Rs. 3,31,500/-. Thereafter, Narender Sethi transferred the remaining portion measuring 134 square yards in the name of son Nitin Sethi, respondent No. 2, who subsequently executed sale deed Ex.PW1/B in favour of the complainant. In both the sale deeds, i.e., sale deed in favour of the complainant and the sale deed in favour of Sumit Kumar, there is no reference of any mortgage over the property. Rather, the properties were sold by showing these free from all encumbrances. Even in the agreement executed by petitioner No. 1 in favour of the complainant, no reference was made about any bank loan. Consequently, the accused had deliberately sold the property in question to the complainant by concealing the fact of mortgage of land. Even, the petitioner No. 1 had obtained loan of Rs. 15 lacs from the bank and petitioner No. 2 alongwith others had stood as an guarantor. Petitioner No. 1 transferred the property in favour of petitioner No. 1 and, thereafter, the petitioner No. 1 had sold the same to Ekta, Monika and Priyanka complainants vide sale deed dated

30.11.2015. Thus, the sellers had complete knowledge with regard to the land in question and he had cheated the respondents.

13. Even otherwise, I have carefully gone through the judgment passed by both the Courts and both the Courts have passed the impugned judgments by appreciating the evidence on record and the settled law.

14. Now adverting to the order of sentence, this Court is conscious of the fact that the FIR in the present case was registered on 03.05.2017 and the petitioners are facing the agony of trial/appeal for the last more than 07 years. Still further, petitioner No. 1 is a senior citizen and is undergoing treatment, which is evident from the medical record (Annexure A-1). Even, both the petitioners are father and son. Still further, the petitioners have undergone more than 01 year and 05 months of sentence. Still further, after the disposal of the appeal by the Sessions Court, the petitioners have handed over a sum of Rs. 15 lacs to Ekta, Monika and Priyanka, i.e., respondents No. 2 to 4 and the learned counsel for the respondents has admitted the said fact.

15. Thus, taking a lenient view, the sentence imposed on the present petitioners is reduced to the period already undergone by them. However, the amount of fine is enhanced to Rs. 25,000/- which shall be deposited by the petitioners in Punjab and Haryana High Court Bar Clerks Association within a period of three months from

today, failing which, the present revision shall be deemed to be dismissed.

16. With the above modifications, the revision is partly allowed and the impugned judgments of conviction are upheld, whereas the order of sentence is modified to the extent that the sentence imposed on the present petitioners is reduced to the period already undergone by them. However, the amount of fine is enhanced to Rs.25,000/-, which shall be deposited by petitioners in Punjab and Haryana High Court Bar Clerks Association within a period of three months from today, failing which, the present revision shall be deemed to be dismissed.

17. All pending applications, if any, are disposed off, accordingly.

29.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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