

CRR-2744-2023(O&M)

Date of Decision: 14.02.2024

TARSEM SINGH

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Chandan Singh Rana, Advocate
for the petitioner

Mr. Subhash Godhara, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

1. This instant revision petition has been preferred against the judgment of conviction and order of sentence dated 23.10.2018 passed by learned Judicial Magistrate Ist Class, Moga in FIR No. 69 dated 05.06.2010 registered under Sections 420, 120-B of the IPC as well as the judgment dated 12.10.2023 passed by learned Additional Sessions Judge, Moga vide which the said conviction was upheld but the sentence was reduced to 2 years from 3 years while keeping intact the other part of the sentences/fine . The petitioner was sentenced as under:-

Under Section	Sentence
420 IPC	R.I of 3 years with a fine of Rs.250/- in default of which S.I for 1 month. (modified to R.I of 2 years by the lower Appellate Court)
120-B IPC	R.I of 3 years with a fine of Rs.250/- in default of which S.I for 1 month. (modified to R.I of 2 years by the lower Appellate Court)

FACTUAL BACKGROUND

2. Briefly, the facts are that the complainant Joginder Singh moved an application the concerned police alleging that Nikki, Jeet Singh, Karamjit Kaur, Tarsem Singh, Gurpreet Kaur, Sukhjinder Kaur and one unknown person had committed fraud to the tune of Rs.50,00,000/- with him on pretext of sending his son abroad. In the first week of January, 2008, the complainant met accused Karamjit Kaur and Gurpreet Kaur who represented that if Rs.50,00,000/- in total, i.e., Rs.25,00,000/- for sponsorship purpose and Rs.25,00,000/- for marriage could be arranged by the complainant, then they could send his son abroad. On the pretext of getting the son of the complainant married to a girl from Canada, the aforesaid accused took the complainant to meet accused Jeet Singh and his wife who said that their daughter Nikki is coming from Canada in May-June of 2008. After the meeting, an advance amount of Rs.10,00,000/- was sought which was paid by the complainant on 12.01.2008 to accused Karamjit Kaur, Tarsem Singh and Gurpreet Kaur in presence of Ram Singh and Lachhman Singh. Then on 20.06.2008, the marriage was solemnized between the son of the complainant and Nikki where the ceremonies were performed by the accused Jeet Singh and his wife. It was found discovered later that the aforesaid accused were not the real father and mother of the girl Nikki and only pretend to defraud the complainant. Even, the accused Gurpreet Kaur pretended to be the sister of Nikki. An amount of Rs.2,00,000/- was spent on the said marriage by the complainant. The accused even got prepared a false Marriage Certificate. After the marriage, the accused Nikki went back to Canada. The complainant arranged Rs.28,00,000/- after selling his land and on 08.07.2008, the accused Karamjit Kaur, Tarsem Singh, Jeet Singh and his wife came and collected the money in

presence of Avtar Singh and Manpreet Singh. Then the accused demanded another Rs.10,00,000/- from the complainant on account of getting visa for his son which was paid by him to one Sukhwinder Kaur, Jeet Singh and his wife in the presence of Jaspreet Singh and Harpreet Singh. Ultimately, after receiving all the aforementioned money, Nikki withdrew the sponsorship of the son of the complainant under the garb of a conspiracy with other accused to cheat the complainant. On the basis of the abovesaid allegations levelled by the complainant, an FIR was registered against the accused.

3. The learned trial Court upon finding a prima-facie case, framed charges against the accused under Sections 420, 120-B IPC, to which they pleaded not guilty and claimed trial. Accused Sukhwinder Kaur @ Sukh Brar and Nikki @ Natika Singh Parmar did not appear to face the trial and were declared as Proclaimed Offenders vide order dated 13.10.2011. Petitioner-accused Tarsem Singh was summoned during the trial under Section 319 Cr.P.C. vide order dated 07.11.2014 and thereafter, joint charges were framed against all the accused.

4. On assessing all the material available on record, the learned trial Court vide judgment dated 23.10.2018 convicted and sentenced the petitioner along with accused Manjit Singh (Jeet Singh), Lakhvir Kaur (Wife of Manjit Singh) and Karamjit Kaur, as mentioned above. Aggrieved by the judgment of conviction, the petitioner along with other accused preferred an appeal before the learned lower Appellate Court in which the said Court upheld the convictions but modified the sentences from 3 years to 2 years while keeping intact the other part of the sentences/fine, vide judgment dated 12.10.2023.

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CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 23.10.2018 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the petitioner, who has already undergone about 4 months of custody. It is further submitted that the petitioner has reformed and intends to live his life as a law-abiding citizen.

6. *Per contra*, learned State counsel opposes the prayer of the petitioners as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court, as such, he does not deserve any leniency.

ANALYSIS AND OBSERVATIONS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

Further, a two Judge Bench of the Hon’ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

9. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner is tabulated as under:-

Petitioner-Tarsem Singh:

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	0 days
2.	Custody after conviction	12.10.2023 to 13.02.2024	124 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	-	124 days
5.	Actual undergone period	-	124 days
6.	Earned remission	-	15 days
7.	Total sentence including remission	4 months 19 days	139 days

10. A perusal of the judgment of conviction passed by the learned trial Court and the learned Lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned counsel for the petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer to quantum of sentence qua the petitioner.

CONCLUSION

11. The FIR in the present case was lodged on 05.06.2010. Petitioner has been facing the agony of protracted proceedings for about 14 years. As per his custody certificate, there are no other criminal cases pending against the petitioner. Out of the total sentence awarded of 3 years, he has already undergone 4 months of custody. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment awarded to the petitioner is reduced to the period already undergone by him.

12. Consequently, the present revision is disposed of in the following terms:-

- i The conviction of the petitioner is upheld, however, the sentence awarded to him is modified to the period of sentence already undergone by him.
- ii The sentence of fine of an amount of Rs.500/- imposed upon the petitioner by the learned trial Court is increased to Rs.10,000/-. The petitioner is directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the

petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. Petitioner-Tarsem Singh is stated to be in jail in this case, so, he is ordered to be released immediately in the present case, if his custody is not required in connection with any other case.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

14.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No