IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(102)

CRR-1707-2004 (O&M)
Date of Decision: 15.01.2025

Shiv Kumar ... .Petitioner

Versus

State of Punjab and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Ravisha Mahajan, Advocate as Amicus Curiae for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab, for respondent No.1.

Mr. Gaurav Goel, Advocate, for respondent No.2.

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JASJIT SINGH BEDI, J.

The present revision petition has been filed impugning the judgment dated 06.08.2004 passed by the Additional Sessions Judge, Jalandhar whereby the appeal filed against the judgment of conviction and order of sentence dated 29.11.1999 passed by the Judicial Magistrate Ist Class, Jalandhar has been dismissed with modification in the sentence.

2. The complaint in the present case under Sections 420, 406, 468 and 471 IPC read with Section 120-B IPC was instituted on 18.10.1985. The judgment of conviction and order of sentence was passed on 29.11.1999 by the Judicial Magistrate Ist Class, Jalandhar. The Appeal

filed against the order of conviction was dismissed on 06.08.2004 with the modification in sentence by the Additional Sessions Judge, Jalandhar. The instant revision petition was filed on 26.08.2004 and has come up for final hearing now i.e. after a period of 39 years from the date of filing of the complaint.

3. Briefly, the case of the complainant Punjab & Sind Bank is that accused R.K. Jain, Parbhash Chand Jain and R.C. Jain were the partners of M/s P.S. Jain Motors, G.T. Road, Jalandhar and were also attached with the accused M/s P.S. Jain Company Ltd. situated at 7-A Rajpur Road, Delhi whereas the accused-petitioner Shiv Kumar, Jaswant Rai Jain and Lajpat Rai Aggarwal were their co-conspirators. R.K. Jain, Parbhash Chand Jain and R.C. Jain alongwith other accused cheated the complainant bank and its other branches to the tune of Rs. Thirteen crores by adopting a well-planned and calculated conspiracy. The method adopted by the accused for executing the offence is as under:-

> *"That a person would be introduced to the concerned bank by the main accused R.K. Jain, P.C. Jain and R.C. Jain and his account was got opened in that bank. Lateron, that man was made to apply to the bank for a loan to buy truck chassis from the main accused. Accused R.K. Jain, Parbhash Chand Jain and R.C. Jain used to intimate the bank in writing confirming the formalities relating to sale of vehicles on receipt of the sale consideration. They issued performa invoice giving details of the contract of sale of vehicle. Relying on these representations, loan was granted which was in fact got paid*

by the said main accused in their own account. After the receipt of money from the bank, the main accused never sold any truck chassis to the person concerned and made no intimation at all to the bank. The loanee took no action by way of intimation to the bank nor any case civil or criminal was initiated against the main accused for the obvious reason that this crime was the joint brain work of all these conspirators.

4. In the year 1979, accused R.K. Jain, Parbhash Chand Jain and R.C. Jain introduced accused-petitioner Shiv Kumar to the complainant bank and got his bank account opened with the complainant bank. On 23.07.1979, accused-petitioner Shiv Kumar Jain, Jaswant Rai Jain and Lajpat Rai Aggarwal made representations to the complainant bank for a loan of Rs. One lac for the purchase of a truck chassis from the accused (Jains). These accused also made representations to the complainant bank for granting a loan of Rs. One lac to Shiv Kumar. All the accused also executed a number of documents in support of their said representation which were later on found to be false. It alleged that relying on the said representations the complainant bank advanced Rs. 1 lac to the accused-petitioner Shiv Kumar who, in turn, got it paid to accused R.K. Jain, Prabhash Chand Jain and R.C. Jain. The complainant bank came to know lateron that all these accused had cheated the bank of a huge amount of money by making false representations and by producing false documents. The Jains (accused), never sold any truck chassis to the accused-petitioner/Shiv Kumar nor any intimation was sent to the bank to

this effect. Shiv Kumar/accused-petitioner also took no action by sending intimation to the bank concerned or filed civil or criminal case against the accused-Jains on coming to know that the said fraud by the above said accused. The matter was brought to the notice of the police authorities but no action was taken by them. Therefore, the complainant bank was constrained to institute the instant complaint.

5. In the preliminary evidence, Gurdeep Singh stepped into the witness box on the basis of which all the accused were ordered to be summoned for the commission of offence punishable under sections 420, 406, 468, 471/120-B IPC vide order dated 4.11.85 passed by the Judicial Magistrate Ist Class, Jalandhar. The accused put in appearance in the court. In the pre-charge evidence, the complainant again examined Gurdeep Singh as PW1 and Daljit Singh as PW2 and failed to produce the remaining evidence. Consequently, the evidence of the complainant was closed by order.

6. After hearing the learned counsel for the complainant, and defence counsel, accused Jaswant Rai and Lajpat Rai were discharged on 25.07.1992 vide order passed by the then Judicial Magistrate Ist Class, Jalandhar and prima-facie offence under Sections 426/120-B IPC was found to be made out against the other accused. Charge was accordingly framed to which the accused pleaded not guilty and claimed trial. All the accused were charged for the commission of offence under section 420 IPC.

7. Gurdeep Singh complainant stepped into the witness box as PW1 and testified that on 18.10.1985, he was posted in Punjab & Sind Bank Lammapind Branch. In the year 1982, he inspected the regular accounts and found the account of the accused-petitioner/Shiv Kumar irregular. It was a case of a truck loan. He further testified that Shiv Kumar was asked to regularize his account but he failed to do so. The accused-petitioner was threatened that his truck would be confiscated and the accused stated that do whatever you like. On further inquiry, it was found that the accused/petitioner had not purchased any truck. The defence counsel got proved the sale voucher Ex.DA, statement of account Ex.DB, copy of plaint of civil suit filed by the bank for the recovery of amount Ex.DC and amended plaint Ex. DD. Daljit Singh PW2 also testified that in the year 1979 he was posted in Punjab & Sind Bank, Lammapind Branch. He proved the application moved by Shiv Kumar as PW2/A, acknowledgment Ex.PW2/B, sale invoice PW2/C, hypothecation deed Ex.PW2/D and receipt regarding receipt of cheque Ex.P2/E.

8. After the closure of the prosecution evidence, the accused were examined under section 313 Cr.P.C. in order to afford them an opportunity to explain the incriminating circumstances appearing against them in prosecution evidence. They denied that their complicity in the crime and pleaded false implication in the case. In defence evidence, they had tendered copy of judgment Ex.DA.

9. Based on the evidence led, the accused/petitioner-Shiv Kumar came to be convicted and sentenced by the court of the Judicial Magistrate Ist Class, Jalandhar vide judgment of conviction and order of sentence dated 29.11.1999 as under:-

Offence under Section	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
420 IPC	RI for 02 year	Rs.1000/-	RI for 02 months

10. The accused/petitioner preferred an appeal which came to be dismissed by the Court of Additional Sessions Judge, Jalandhar, vide judgment dated 06.08.2004 while reducing his sentence to rigorous imprisonment for a period of 06 months only. However, the fine imposed by the Trial Court was ordered to remain intact.

11. The aforementioned judgments are under challenge in the present petition.

12. During the pendency of the instant revision petition, the sentence of imprisonment of the accused/petitioner was stayed vide order dated 27.08.2004.

13. The learned Amicus Curiae for the petitioner contends that the judgments of conviction and order of sentence was passed on the basis of conjectures and surmises. No offence under Section 420 IPC is made out. A total loan amount of Rs.1,00,000/- had been sanctioned by the Bank and admittedly, a sum of Rs.96,000/- stood paid to the Bank-respondent No.2 in discharge of his liability. The sale invoice of the vehicle would show that the vehicle in question had, in fact, been sold. Therefore, the accused-

petitioner was liable to be acquitted. In the alternative, it is prayed that as the occurrence was of the year 1979 and the accused-petitioner-Shiv Kumar had clean antecedents, he be released on probation or his sentence be reduced to the period already undergone by him.

14. The Counsel for the State, on the other hand, has filed a custody certificate dated 09.09.2024 of the accused-petitioner, which is taken on record. As per the said custody certificate, the accused-petitioner has undergone 25 days out of his substantive sentence. He alongwith the learned counsel for respondent No.2 contend that the offence in question stood established beyond reasonable doubt. As regards the reduction of sentence, they contend that the nature of the offence committed by the accused-petitioner did not entitle him to the concession of either probation or reduction of his sentence.

15. I have heard the learned counsel for the parties and gone through the record.

16. Admittedly, the vehicle in question was to be supplied to the accused-petitioner but was not done. The accused-petitioner did not lodge any claim against R.K. Jain, Prabhash Chand Jain and R.C. Jain for non-supply of the vehicle. An application Ex. PW-2/A moved by the Shiv Kumar-accused/petitioner would show that he had applied for a loan for the purchase of a truck chassis on sanction of the loan amount. The sale invoice Ex.PW-2/C is only an invoice and does not show that the vehicle was delivered to the accused-petitioner. No such evidence of sale was

available on record. Thus, apparently, the accused-petitioner had not utilized the loan amount for the purpose of which it was obtained and as such, commission of offence under Section 420 IPC stands established.

17. Resultantly, no fault can be found with the well-reasoned judgments of the Trial Court dated 29.11.1999 and the Lower Appellate Court dated 06.08.2004, Therefore, the present petition stands dismissed.

18. As regards imposition of sentence, admittedly, the complaint in question was instituted in the year 1985 and as many as 39 years have passed ever since then. A perusal of the custody certificate of the accused-petitioner would show that he does not have any criminal antecedents and is a first time offender. Therefore, the sentence of the accused/petitioner is reduced to the period already undergone by him i.e. 25 days.

19. The present revision petition stands disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

January 15, 2025
sukhpreet Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No