

IN THE COURT OF NEELAM, PCS, JUDICIAL MAGISTRATE FIRST CLASS, DASUYA, UID PB0651.

CNR No.	PBHOA10002542018
CIS No.	CHI/75/2018
Date of Instt.	20-03-2018.
Date of Decision	12-04-2023

State

Versus

1. Sarabjit Singh son of Teja Singh resident of village Manka Ghuman, Phagwara, District Kapurthala.
2. Parveen Kumar Sabharwal @ Parshant Kumar son of Ashwani Kumar resident of house No. 373, Goklaka Bagh, 100 Futti Road, BDIV-ASR (Since Proclaimed Person).

.....Accused.

FIR Number :114 dated 4-5-2013
Under Sections : 420, 406 & 34 of IPC.
Police Station : Tanda, District Hoshiarpur.

Present:- Ld. APP for the State.
Accused Sarabjit Singh on bail with counsel Sh. RS Abhi, Advocate.
Accused Parveer Kumar Sahbarwal (Since Proclaimed person).

JUDGMENT

1. The above-named accused has been sent up to this Court to face trial for commission of offence punishable under Sections 420, 406 & 34 of IPC, by the Station House Officer, Police Station Tanda.

2. Briefly, the instant case was registered on the statement of Harbans Kaur wife of Dilbagh Singh resident of Ward No. 3, Mohalla Singhpura, PS Tanda, District Hoshiarpur, to the effect that her husband is residing in USA. She and her daughter Taranjit Kaur are residing in the house. She and her sister-in-law Balwinder Kaur wife of Daljit Singh resident of village Pathankot Jugial had gone to Baba Nirmal Singh to resolve some problem and they then introduced with Parveen Kumar Sabharwal @ Parshant Kumar son of Ashwani Kumar and said that he will send her and her daughter to USA because has good connection with the American Embassy. He also said that he and accused Sarbjit Singh resident of Phagwara will be responsible for all the money. On 17-09-2011 Parveen Kumar @ Parshant Kumar took Rs. 15 lakhs from her in the presence of her sister-in-law. Then on 20-09-2011 he took Rs. 1 lakh, on dated 1-10-2011 Rs. 5 lakhs, on dated 14-10-2011 he took Rs. 7,50,000/-, On dated 5-1-2012 he took Rs. 4,00,000/- and then Parveen Kumar took Rs. 10,00,000/- from them on the pretext of getting her nephew Parminder Singh employed in Punjab Police as ASI. Parveen Kumar @ parshant Kumar cheated them on the pretext of sending her and her daughter to USA for and took Rs. 42,50,000/- and accused Sarabjit Singh cheated them by taking Rs. 5,00,000/- from them on 10-09-2012. Both the above said persons have cheated them and took Rs. 52,00,000/- on the pretext of sending her and her daughter to USA and for getting job as ASI for her

nephew in Punjab Police. The above said accused have not returned their money and are threatening them with dire consequences.

On the basis of the above said allegations, detailed inquiry was conducted and as a result, instant FIR was registered. Investigation of the offence was started. During investigation, statements of the witnesses were recorded, evidence was collected by the police. Accused Parveen Kumar @ Parshant Kumar was declared a proclaimed persons and challan was presented in the court. Thereafter, accused Sarabjit Singh was summoned to face trial under section 319 Cr.P.C. by my learned predecessor.

3. On appearance of accused Sarbjit Singh, copies of challan and other documents were supplied to him free of costs as required under Section 207 of the Cr. P.C. A separate statement to this effect was also recorded.

4. Thereafter, finding a prima facie case for commission of offences punishable under sections 420, 406 & 34 of IPC against the accused, charge was framed accordingly, to which she pleaded not guilty and claimed trial. Consequently, the case was fixed for evidence of the prosecution.

5. In order to substantiate its case, prosecution examined the following witnesses and placed on record the following documents:-

Sr. No.	Name of the witness.	Documents.
1.	PW1 Kamaljit Kaur	• Copy of the sale deed as Ex. PW3/A.
2.	Harbans Kaur as PW2	• Statement Ex. PA.

3.	Surinderjit Singh as PW3	
4.	Baldev Singh as PW4	
5.	Balwinder Kaur as PW5	
6.	Ins. Shiv Singh as PW6	• Statement Ex. PA. • Police proceedings as Ex. PW6/A. • Ruka as Ex. PW6/B. • FIR as Ex. PW6/C.
7.	SI Chanchal Singh as PW7	
8.	Kuldeep Kumar Clerk as PW8	• Account Statement as Ex. PW2/A.
9.	Parminder Singh as PW9	• Sale deed as Ex. PW9/A.

Thereafter, the evidence of prosecution was closed.

6. On closure of prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded in which all the incriminating evidence appearing against him was put to him. He has pleaded that he is innocent and has been falsely implicated in this case. He neither demanded any money nor the same was handed over to him and he had no talk with complainant for sending them abroad.

7. Learned APP for the State while referring to the testimony of prosecution witnesses and documents prayed that the prosecution has been able to bring home the guilt of the accused beyond a shadow of reasonable doubt. He further argued that the oral testimony of witnesses is duly corroborated by documents and the accused failed to cause any dent

to the testimony led by prosecution. Therefore, the accused is liable to be convicted in the present case.

8. On the other hand, learned defense counsel has challenged the case of the prosecution on various grounds and has prayed for acquittal of the accused. It has been argued that there is no evidence against the accused on the basis of which he can be convicted. He has further alleged that the prosecution has failed to discharge its burden of proof and accused is entitled to be acquitted. He has further argued that necessary ingredient of inducement for commission of offence of cheating on the part of accused is not present and hence, accused is not liable for commission of alleged offences. It has been further alleged that in entire evidence led by prosecution it clearly reflects that accused Sarabjit Singh was innocent. Hence, he prayed for acquittal of the accused.

9. After hearing both sides and before making any analytical remarks on the merits of the case, following point of determination arises for the decision of the case:-

Whether the accused Sarabjit Singh in furtherance of common intention with his co-accused cheated the complainant and has received Rs. 42,50,000/- from the complainant on the false pretext of sending the complainant and her daughter to USA, and for getting employed the nephew of complainant in Punjab police or misappropriated or converted to his own use amount received from the complainant?

Point of Determination

10. The accused is facing charges for the commission of offences under section 420 and 406 IPC read with Section 34 IPC with the allegations that the accused along with his co-accused Parveen Kumar @ Parshant Kumar cheated the complainant and dishonestly and fraudulently received an amount of Rs. 42,50,000/- for sending the complainant and her daughter to USA and for getting employment for nephew of complainant in Punjab police but thereafter, they failed to do so. In order to prove the point of determination prosecution has examined as many as 8 witnesses. The present FIR was registered after inquiry by police on the statement of complainant Harbans Kaur who has been examined as a prosecution witness as PW2 and she has deposed in lines of prosecution story that her husband Dilbagh Singh resides at USA from the last 33 years. In the year 2011 her daughter Taranjit Kaur was unmarried and living at her house in Tanda. She and her sister-in-law used to go before Baba Nirmal Singh at village Teha Madiala for resolving their problems. He told her that he has approach at USA embassy and he will send her and her daughter to USA and for this purpose he introduced them with accused Sarabjit Singh and Parveen Kumar (since PO). She has further deposed that on 17.9.2011 she gave Rs.15 lacs to Parveen Kumar in presence of her sister-in-law namely Balwinder Kaur and on 20-9-2011 she again gave Rs.1 lakh to Parveen Kumar, then gave Rs.7,50,000/- to him, again gave Rs.4 lacs to him and lastly, she gave Rs.5 lacs to accused Sarabjit Singh but she could not tell

exact dates. She has further deposed that the amount which was given by her to accused persons was arranged after selling their shops, some amount was sent by her husband and some was withdrawn by her from her bank account.

11. Prosecution has further examined PW1 Kamaljit Kaur who has deposed that on 25.10.2011 she purchased one plot of 4 Marlas from complainant Harbans Kaur on consideration amount of Rs.3,30,000/- and she further deposed that complainant told her that she needs money for giving the same to Parveen Kumar Travel Agent. She proved the sale deed Ex.PW3/A.

12. Prosecution has further examined PW3 Surinderjit Singh who has testified that his friend Baldev Singh son of Jagir Singh told him that he had a talk with accused Parveen Kumar for securing a job in police in the rank of ASI for the son of Baldev Singh and for this purpose he requested him to give money as a loan. He withdrew some amount from his account and arranged some from his home and gave Rs.5 lacs to Baldev Singh as loan and then Baldev Singh after adding Rs.5 lacs more gave Rs.10 lacs to Parveen Kumar in his presence. In his cross examination he stated that he does not know accused Sarabjit Singh.

13. Prosecution has further examined PW4 Baldev Singh who has deposed that he was working in PWD Department and retired from service on 31.12.2015. In the year 2012 his son Parminder Singh had

passed 10+2 and was interested in getting Government job. He further deposed that his neighbour Harbans Kaur told him that he had talk with Parveen Kumar and Sarabjit Singh for sending her abroad and she told him that they have good approach in Government and they can secure a job for his son as ASI in Punjab Police. Thereafter, accused Sarabjit Singh and Parveen Kumar contacted him and demanded Rs.10 lacs for securing for his son. Then he gave Rs.10 lacs to them on different dates but they failed to secure a job for his son and thereafter he also came to know that they committed fraud with Harbans Kaur too for sending her and her daughter to abroad.

14. Prosecution has further examined Balwinder Kaur as PW5 and she deposed that she along with her sister-in-law Harbans Kaur and her daughter Taranjit Kaur used to visit Baba Nirmal Singh. There one person namely Parveen Kumar met them and told that he has links in USA and can help for sending Taranjit Kaur to USA. Complainant gave Rs.15 lacs on 17.9.2011 in her presence and she also deposed that he also took Rs.10 lacs for the purpose of securing job to the son of Baldev Singh.

15. Prosecution has further examined PW6 Inspector Shiv Singh who is one of the Investigating Officers of this case and he proved the formal part of investigation performed by him and proved official documents as mentioned above. Further PW7 ASI Retired SI Chanchal Singh has been examined who being Investigating Officer recorded the statements of

witnesses during investigation and filed challan in the court. In his cross examination he stated that accused Sarabjit Singh was found innocent during investigation. Prosecution has further examined PW8 Kuldeep Kumar Clerk State Bank of India who has proved the statement of account belonging to Surinder Singh as Ex.PW2/A. Lastly, prosecution has examined PW9 Parminder Singh Registration Clerk who has proved the record of sale deed bearing vasika No.2089 dated 25.10.2011 executed by Harabans Kaur and Surinderjit Singh in favour of Kamaljit Kaur as Ex.PW9/A.

16. I have carefully considered the testimony led by prosecution and have perused the documents on record carefully. First of all, for conviction of accused under section 420 IPC, the offence of cheating under section 415 IPC has to be proved. It has to be proved that the accused induced the complainant and cheated her which resulted in delivery of money. Inducement is necessary ingredient of section 420 IPC. For the purpose of proving offence under section 420 IPC, it has to be established that offence under section 415 IPC was committed by the accused. These provisions are narrated below for ready reference:-

Section 415 in The Indian Penal Code

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. Explanation—A

dishonest concealment of facts is a deception within the meaning of this section.

Section 420 in The Indian Penal Code

420. Cheating and dishonestly inducing delivery of property—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Further the elements of offence under section 420 IPC are as follows:-

- Deceit by accused.
- Inducement of someone by the deception.
- The inducement so caused is fraudulent and/or dishonest.
- The person induced either delivers some property or consents for the retention of any property by any other person.

To punish an act under Section 420, cheating must be proven. Inducement is an essential ingredient which must be proved first in order to attract the provisions of section 420 IPC. In Archana Rana vs. State of Uttar Pradesh [CRIMINAL APPEAL NO. 167 OF 2021], the Hon'ble Supreme Court while relying upon R.K. Vijayasathya v. Sudha Seetharam (2019) 16 SCC 739 and Dr. Lakshman v. State of Karnataka (2019) 9 SCC 677 has held that the ingredients to constitute an offence under Section 420 are as follows: i) a person must commit the offence of cheating under Section 415; and ii) the person cheated must be dishonestly induced to a) deliver property to any person; or b) make, alter or destroy valuable security or anything signed or

As per the ingredients of Section 420 IPC, there must be some promise or inducement on the part of accused. Along with this allurement, the delivery of money etc. should also be proved.

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complainant and no talk between him and complainant held for sending them abroad. Inducement is necessary ingredient of section 420 IPC and it has to be proved that there was active inducement on the part of accused as a result of which money was delivered by complainant to the accused. As per the prosecution version the accused Sarabjit Singh along with his co-accused Parveen Kumar induced the complainant for sending them abroad and demanded money for the same. But as per the statement of complainant Ex. PA given to police, first of all Baba Nirmal Singh had told her that he has links in USA and can send them abroad. He introduced the complainant with Parveen Kumar and told her that he and Sarabjit Singh accused will take care of money required for the above said purpose. But while deposing in court, she made improvement in her statement by stating that Baba Nirmal Singh had introduced her to accused Sarabjit Singh and Parveen Kumar. However, as per her statement Ex. PA, she was introduced to accused Parveen Kumar only. Moreover, the responsibility of money was taken by Baba Nirmal Singh along with accused Sarabjit Singh on his own, but no promise came from the side of accused Sarabjit Singh.

18. Further as per the testimony the money was handed over by complainant to Parveen Kumar. It is clear from the statement of complainant that there was no inducement from the side of accused Sarabjit Singh and he never promised and induced the complainant to send them abroad.

send them abroad. The only inducement alleged by the complainant is on the part of Baba Nirmal Singh and Parveen Kumar who are not facing trial before the court at this time. Therefore, one of the most important ingredients of section 420 IPC i.e. inducement has not been fulfilled in the present case and hence accused cannot be hauled up for the said offence.

19. Further, as per the statement of the complainant, she handed over Rs. 5,00,000/- to accused Sarabjit Singh but she did not remember the date when money was handed over to him. No other witness has been examined in whose presence money was handed over to accused Sarabjit Singh. Even no day, place or anything else has been stated by the complainant when money was handed over to accused Sarabjit Singh. All the witnesses examined by the prosecution deposed against accused Parveen Kumar only and involvement of accused Sarabjit Singh could not be established. Even PW4 Baldev Singh in his testimony before the court named both the accused persons but in his statement before police Mark D4/A, he only named accused Parveen Kumar. This clearly shows that several improvements have been made in the testimonies of prosecution witnesses in order to create evidence against accused Sarabjit Singh. But there is no cogent and convincing evidence against him on the basis of which he can be hauled up.

20. It is the case of prosecution that accused Sarabjit Singh in furtherance of common intention induced the complainant to deliver her

money. In order to fix liability upon the accused under section 34 IPC, the evidence of meeting of minds and pre-planning is required. It must be shown that accused shared their intention with each other and committed the alleged offence in furtherance of such intention. Common intention can be formed on the spot at spur of moment, but it is not the scenario in the present case. The allegations in the present case pertains to cheating and mis-appropriation of money, so evidence of common intention and meeting of minds must have been brought on record.

21. As far as the allegation of Section 406 IPC are concerned, no evidence has been led by prosecution to prove this offence. In order to prove Section 406 IPC the prosecution was required to prove that there was specific entrustment of property to accused which has been misappropriated by the accused for his own use. The prosecution has failed to produce any relevant evidence qua the allegations of Section 406 IPC qua entrustment of any property to the accused. As such, no offence under Section 406 IPC is made out against accused.

22. In view of the above discussion, it is concluded that prosecution has failed to prove its case beyond a shadow of reasonable doubt. It is cardinal principle of the criminal jurisprudence that the prosecution has to prove its case beyond shadow of reasonable doubt. In this regard, I am enshrined by an authority of Hon'ble Supreme Court reported in 2003(4) RCR (CRIMINAL) PAGE 794 wherein it has been laid down as under:-

“That criminal jurisprudence of our country proceeds on the basis that a person is innocent and the burden rests on the prosecution to prove beyond all reasonable doubt as regard the guilt of the accused”.

In the instant case the prosecution has miserably failed to do so. Resultantly, accused Sarabjit Singh is liable to be acquitted in the interest of justice. Therefore, the accused Sarabjit Singh is acquitted from all the charges framed against him. His bail bonds and surety bonds already furnished will continue for a period of 6 months as per the provisions of the section 437-A of the Cr.P.C. If no appeal or revision be preferred then his bail bonds and surety bonds shall stand discharged automatically after the lapse of 6 months. Case property if any be disposed of under rules after expiry of period of appeal or revision or after the decision of appeal or revision if any. File be consigned to Record Room. Accused Parveen Kumar Sabharwal is proclaimed person in this case. File be taken up again as and when the accused Parveen Kumar Sabharwal is arrested and produced in the Court.

Pronounced:- 12-04-2023.
Varun Talwar.

(Neelam), PCS,
Judicial Magistrate First Class
Dasuya
UID PB0651.

Neelam, JMJC, Dasuya.
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Present: Ld. APP for the state.
Accused on bail with counsel Sh. RS Abhi, Adv.

Accused closed his defense evidence vide separate statement.

Arguments heard. Vide my separate detailed judgment of even date, accused Sarabjit Singh is acquitted from all the charges framed against him. His bail bonds and surety bonds already furnished will continue for a period of 6 months as per the provisions of the section 437-A of the Cr.P.C. If no appeal or revision be preferred then his bail bonds and surety bonds shall stand discharged automatically after the lapse of 6 months. Case property if any be disposed of under rules after expiry of period of appeal or revision or after the decision of appeal or revision if any. File be consigned to Record Room. Accused Parveen Kumar Sabharwal is proclaimed person in this case. File be taken up again as and when the accused Parveen Kumar Sabharwal is arrested and produced in the Court.

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