

In the Court of Shri Simrandeep Singh Sohi, PCS, Judicial Magistrate Ist Class, Zira.

Case No. 159-1 of 23.07.2014.

CIS No.CHI.112.2014.

CNR No. PBFZAI-000259-2014.

Date of Decision: 01.04.2019.

State Versus 1.Jaspal Singh son of Santokh Singh, resident of
 Bhullar road Batala, P.S Civil Line Batala, District
 Gurdaspur.
 2. Munish Kumar son of Mohinderpal, resident of
 Dera Baba Nanak P.S District Gurdaspur.(Since PO)
 3. Balwinder Kaur wife of Jaspal Singh son of
 Santokh Singh, resident of Bhullar road Batala, P.s
 Civil Line Batala, District Gurdaspur.
 Accused.

FIR No. 115 dated 09.07.2013,
Under Sections 420,120-B IPC.
Police Station Zira.

Present:- Mr. Gaurav Dewan, APP for the State.
 Accused Manish Kumar (since PO),Remaining accused
 on bail with counsel Shri I.S Dhanju Advocate.

JUDGMENT.

1) The present report under section 173 Cr.P.C has been submitted by the Officer in-charge of Police Station Zira against the accused Jaspal Singh, Munish Kumar and Balwinder Kaur for having committed offence under sections 420, 120-B of Indian Penal Code within its jurisdiction.

2) Briefly stated the facts of the prosecution case are that on 15.04.2013, complainant moved an application to the Senior Superintendent of Police, Ferozepur, for taking action against Jaspal Singh, Balwinder kaur, both residents of Dhir road Batala, on the allegations that they cheated complainant and took Rs. 7,45,000/-. In his application complainant stated that he is electrician and Jagtar Singh is meson and he came to know Jaspal Singh through Jagtar Singh who used

to work as Travel agent. In the month of December 2009 Jaspal Singh and his wife came to the house of Jagtar Singh at village Macchian. Complainant further stated that he told Jaspal Singh that he and Gurjant Singh are interested to go abroad. Complainant told Jaspal Singh that they want to go to South Africa and Jaspal Singh said that he will take Rs. 4 Lacs to send complainant to South Africa. Then on 14.12.2009 Jaspal Singh and his wife Balwinder Kaur came to Zira in the house of Jagtar Singh, where complainant and Gurjant Singh gave Rs. 1,50,000/- each along with their Passports and 5-5 photographs to Jaspal Singh in the house of Jagtar Singh. Complainant further stated thereafter, they telephonically connected with them. Again on dated 11.7.2010 at about 11, 11:30 both the accused including accused Munish Kumar came in the house of Jagtar Singh, where again complainant and Gurjant Singh gave Rs. 2,50,000/- each to them in the presence of Sukhwinder Singh son of Surjan Singh, Om Parkash and Amar Singh MC and the accused after counting the same kept in their custody and they also assured the complainant and Gurjant Singh that they will send them abroad and also promised the complainant and Gurjant Singh that they will also serve them a job. Thereafter on 01.8.2010 complainant and Gurjant Singh went to Delhi Airport from where they reached to South Africa. Where after some days they came to know that accused Jaspal Singh has not arranged any work permit nor any company called them on work permit and when complainant told the entire facts that fraud has been committed with them, then Kulwant Singh through Jagtar Singh called Jaspal Singh in Zira and on 07.08.2010 he wrote an agreement in which he agreed that he had

received Rs. 7,45,000/- from complainant and Gurjant Singh and also write that this is his responsibility to get the work permit. The alleged agreement was typed by Jagtar Singh, in the presence of witnesses Jaswinder Singh, Sukhwinder Singh in Tehsil Compound Zira. But due to non settlement in south Africa complainant and Gurjant Singh came back to India and after that they along with Kulwant Singh, Gurjant Singh, Ajit Singh Makhan Singh went to the house of Jagtar Singh where he gave Rs. 50,000/- to each complainant and Gurjant Singh and also gave a cheque of Rs. 2,00,000/- but the same was not cashed thereafter, complainant again called accused person and told him the entire facts and he again called complainant and Gurjant Singh to his house where he gave two cheques of Rs. 1,00,000/- each to complainant and Gurjant Singh but the same was also not cashed. When complainant and Gurjant Singh told this facts to accused and demanded his money back then accused faultly refused to give the money back to the complainant and Gurjant Singh and also stated that they committed fraud with the complainant and Gurjant Singh. Thereafter, on the directions issued by the Senior Superintendent of Police, Ferozepur, a case was registered against the accused. Investigation was conducted by police authority and during investigation, statements of witnesses under Section 161 Cr.P.C. were recorded. Relevant bank record was taken into custody. During investigation accused Jaspal Singh and munish Kumar were arrested. After completion of investigation and all the formalities, challan against the accused was presented in the Court against the accused Munish Kumar and accused Jaspal Singh. Thereafter, application under section 319 Cr.P.C filed and accused Balwinder Kaur was also

summoned in this case.

3) On presentation of challan/report under Section 173 Cr.P.C., against the accused, copies of the documents relied upon by the prosecution were supplied to them free of costs as envisaged under section 207 Cr.P.C .

4) After hearing the learned APP for the State and the learned defence Counsel and examining the report submitted under Section 173 of the Code of Criminal Procedure and supporting documents, a prima-facie case against the aforesaid accused for having committed offences punishable under Sections 420, 120-B of the Indian Penal Code was made out and charge against them was framed accordingly, to which, they pleaded not guilty and claimed trial. An application under section 319 Cr.P.C to summon accused Balwinder Kaur has been filed which was allowed and accused Balwinder Kaur was summoned and charge sheeted for the offence punishable under section 420, 120-B of IPC.

5) Prosecution examined complainant as PW1, ASI Bikram Singh as Pw-2, Gurjant Singh as PW3, ASI Rajinder Singh as PW-4, Vipin Kumar as PW-5, Dev Raj Stamp vendor as PW-6, Santokh Singh as Pw-7, Kulwant Singh as Pw-8, Hardev Singh Boparai DSP as PW-9 and thereafter, Ld. APP closed the evidence on behalf of prosecution.

6) The aforesaid Pws proved on record the following documents:-

- i) Photocopy of cheques Ex. PW1/A and Ex. PW1/B
- ii) Memo of cheque Ex. PW1/C, PW1/D, PW1/E, Ex. PW1/F,
- iii) Photocopy of agreement Ex. PW1/G, endorsement Ex. PW1/H

- iv) Statement of Pritam Singh Ex. PW1/A
- v) Inquiry report Ex. P2
- VI) FIR Ex. P3,
- VII) Memo for joining investigatoin to accused Jaspal Singh Ex P4
- viii) Memo of arrest of accused Jaspal Singh ex. P5, Memo of personal search Ex. P6, Memo of intimation Ex. P7
- ix) Memo of arrest of accused Manish Kumar Ex. P8
- x) Application moved to police station Ex. PW3/A
- xi) Copy of affidavit Ex. PW1/G, endorsment Ex. PW1/H
- xii) Copy of register of Vipan Kumar Ex. PW5/A
- xiii) Copy of affidavit of Dev Raj Sharma Mark PW6/A
- xiv) Copy of register of Dev Raj Ex. PW6/B
- xv) Statement of account of Pritam Singh Ex. PW7/A
- xvi) Original cheque bearing No. 91242 Ex . PW1/B, Memo of the same Ex. PW1/D
- xvii) Memo dated 07.3.2011 Ex. PW1/E
- xviii) Inquiry report Ex. P2.

7) On closure of the evidence on behalf of the prosecution, statement of accused Balwinder Kaur and Jaspal Singh under Section 313 Cr.P.C. were recorded wherein incriminating material appearing against him in the prosecution evidence was put to them to which the accused denied. The learned counsel for the accused closed defence evidence on behalf of accused.

8) I have heard the learned APP for the State and learned defence counsel and have gone through the record carefully.

The only point arises for determination in this case is:-

Whether on 14.12.2009 in the area of village Machhia, you accused agreed to to an illegal act and committed fraud by procuring of Rs. 7,45,000/- from Gurjant Singh and Pritam Singh to send them abroad and did not send them to abroad or nor you returned there money and that you have committed offence punishable under section 420 and 120-B of IPC?

9) The learned APP for the State has argued that the prosecution has fully proved its case by the testimony of PW1 to PW-9. As such,

accused are liable for conviction of offence committed under Section 420, 120-B of IPC.

10) On the other hand, the learned defence counsel has contended that the prosecution has miserably failed to prove its case because there are major discrepancies in the prosecution version and statements of Pws.

11) In the present case the accused persons committed offence under section 420 and 120-B of IPC. Heard. The **ingredients** required to constitute the offence of **cheating** are :--

(i) There should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived;

12) However, in order to prove his case the prosecution has examined Pw-1 Pritam Singh complainant himself who during his testimony in court reiterated all the facts mentioned in his statement and further proved on record documents i.e. Memo of bank Ex. PW1/A, report Ex. PW1/B, cheque of Rs. 1 Lakh dated 16.04.2011 Ex. PW1/C, Cheque dtd 16.06.2011 Ex. PW1/D, Memo of bank Ex. PW1/E, Ex. PW1/F, agreement dated 07.08.2018 Ex. PW21/G, Application Ex. PW1/H, Signature as Ex. PW1/J, statement Ex. PW1/K. Thereafter, prosecution examined ASI Bikram Singh Investigating officer as PW-2 deposed who during his testimony in court deposed as per the investigation conducted by him and further proved on record documents i.e. order dated 15.04.2013 Ex. P1, inquiry report Ex. P2, FIR Ex. P3, Memo of arrest Ex.

P4, Ex. P5MEMo of personal search Ex. P6, Memo of intimation Ex. P7, Memo of arrest of accused Munish Kumar Ex. P8. Thereafter, prosecution examined complainant Gurjant Singh as Pw-3 who during his testimony in court deposed as per his statement and further corroborated the version of Pw-1 Pritam Singh. He also proved on record documents i.e. his statement Ex. PW3/A. Thereafter, prosecution examined ASI Rajinder Singh As. PW4 who during his testimony in court deposed that initial investigation in this case was conducted by ASI Bikram Singh and thereafter file was handed over to him for investigation. He further stated that during invesitgation he recorded statements of concerned witnesses. Thereafter, prosecution examined Vipam Kumar stamp vendor as PW-5 who during his testimony in court deposed regarding the sale of stamp paper to Jaspal Singh and he also proved affidavit Ex. PW1/G, endorsemtnt Ex. PW1/H, copy of his register Ex. PW5/A. Thereafter, prosecution examined Dev Raj Stamp vendor as PW-6 who during his testimony in court deposed regarding the sale of stamp paper to Jagtar Singh and proved affidavit Mark PW6/A, copy of register mark PW6/B. Thereafter, prosecution examined Santokh Singh clerk of SBI as Pw-7 who during his testimony in court deposed regarding the cheque given by Jaspal Singh to complainant. He further proved on record statement of account of complainant Pritam Singh Ex. PW7/A, cheque no. 91242 Ex. PW1/B, Memo Ex. PW1/D, Memo dated 07.03.2011 Ex. PW1/E, Ex. PW1/F. Thereafter, prosecution examined Kulwant Singh as PW-8 who during his testimony in court deposed as per the story of prosecution and supported the version of Pw-1 and Pw-3. Thereafter, prosecution

examined PW-9 Hardev singh Boparai,DSP who during his testimony in court deposed that application Ex. PW3/A was moved by Pritam Singh and Gurjant Singh to SSP Ferozepur which was marked to him vide order Ex. P1. He further stated that during inquiry he called both the parties and recorded their statements and also found that accused committed fraud of Rs. 7,45,000/- for sending Pritam Singh and Kulwant Singh to abroad. He further proved on record inquiry report Ex. P2, his signature over the inquiry report Ex. PW9/A, direction given to register the case as Ex. PW9/B.

13) It is argued by learned A.P.P on behalf of the State that from the evidence led on record by the prosecution, it has been duly proved on record that accused Jaspal Singh and Balwinder Kaur cheated with the complainant by entering into illegal agreement by illegal means and procured Rs. 7,45,000/- from Gurjant Singh and Pritam Singh to send them abroad and did not send them to abroad or nor you both returned the amount. First of all perusal of the file reveals that agreement dated 07.08.2010 Ex. PW1/G which was executed by the Jaspal Singh, wherein he deposed that he had taken Rs. 4,40,000/- from each Pritam Singh and Gurjant Singh for the purpose for sending them abroad and he also issued them work permit in Rainbow Company in South Africa and he further stated that he has received Rs. 3,65,000/- from Pritam Singh and Rs. 3,80,000/- from Gurjant Singh and he further deposed in the agreement that in case of any inconvenience he will return the entire amount i.e. Rs. 8,80,000/- to Pritam Singh and Gurjant Singh. The alleged agreement was duly signed by Jaspal Singh himself and witnessed by Jagtar Singh,

Makhan Singh, Kulwant Singh and Jaswinder Singh. Further Pw-5 Vipin Kumar Stamp Vendor appeared in the court and proved on record the alleged agreement dated 07.08.2010 As Ex PW1/G and also proved endorsement of Jaspal Singh as Ex. PW1/H. Further, when the complainant returned back to South Africa then they called Jaspal Singh to return their money and then Jaspal Singh visited to their place at Zira and deposited Rs. 50,000/- each in the account of Pritam Singh and in the account of Gurjant Singh and on 16.01.2011 he gave a cheque bearing of Rs. 2 Lakh issued in favour of Pritam Singh and when on 17.01.2011 Pritam Singh presented this cheque for clearance the same was came back with the memo of insufficient fund and to prove the same prosecution examined Pw-1 Santokh Singh Clerk State Bank of Patiala who during his testimony in court deposed that on dated 17.01.2011 cheque of Rs. 2 Lakh bearing No. 45383 was presented for clearing but the said cheque came back with memo of insufficient fund and further proved copy of account of Pritam Singh as Ex. PW7/A and copy of memo as Ex. PW1/E. Then as per the version of prosecution complainant again approached to accused Jaspal Singh and told about the dishonour of cheque of Rs. 2 Lakh and thereafter, accused Jaspal Singh handed over him two cheques of Rs. 1 Lakh each in favour of Pritam Singh from the account of Munish Kumar accused who is Proclaimed offender in this case same is Mark PA and when again the complainant presented the said cheque in the bank same were also dishonoured with memo insufficient funds which is Ex. PW1/C and Ex. PW1/D and same thing is also clear from the evidence of PW-7 Santokh Singh Clerk. He has also placed on record account Statement of

Pritam Singh from dated 07.01.2011 to 30.06.2011 as Ex. PW7/A which also depicted the entry dated 17.01.2011 and 24.01.2011 when Pritam Singh presented by the above said cheques in the Bank Pritam Singh in the Bank on 17.01.2011. This creat a serious doubt on the part of accused that if as per the version of ld. Counsel for the accused that they had not received any amount from the complainant then why they gave such cheques of heavy amount to the complainant.

14) On the other hand counsel for the accused Jaspal Singh argued that the said cheques were not belonged to accused Jaspal Singh as the same was belong to accused Manish Kumar. So, no liability of accused Jaspal Singh regarding the said cheque is arose.

15) Furthermore, prosecution examined PW-5 Vipam Kumar, Stamp Vendor who during his testimony in court proved on record the agreement dated 07.08.2010 Ex. PW1/G and endorsement Ex. PW1/H which was executed by accused Jaspal Singh and witnessed by Jagtar Singh, Makhan Singh, Kulwant Singh and Jaswinder Singh in favour of Prtaim Singh and Gurjant Singh wherein, he clearly deposed that he had received Rs. 3,65,000/- from Pritam Singh and Rs. 3,80,000/- from Gurjant Singh and also mentioned that he will settled them in abroad and also issued them work permit and in case of failure he is liable to pay back Rs. 8,30,000/- to complainant. However, no such evidence is produced by the accused from where it could be establish that the signatures on the agreement dated 07.08.2010 is forged and fabricated. Even no handwriting and finger print was examined by the accused to falsify the alleged agreement or his signature over the same. Which also creates a serious

doubt on the part of accused that why accused Jaspal Singh was remained silent about the said agreement and his signature over the same. This facts corroborated the story of prosecution.

16) On the other hand ld. Defence counsel argued that prosecution has not examined any scribe of the agreement Ex. PW1/G nor the notary public from where the alleged agreement was attested, examined by the prosecution. He further argued that the alleged agreement was scribed on 7.08.2010 and as per the version of complainant accused took the money on 11.7.2010, then why the alleged agreement was scribed after one month of taking the money. But the above said argument of ld. Counsel for the accused is not tenable as it does not mean that the accused denied the alleged agreement Ex. PW1/G.

17) Apart from this, when DSP Hardev Singh Bopari as PW-9 conducted inquiry in the said case and filed his inquiry report i.e. Ex. PW9/A, he clearly wrote down in his inquiry report that during inquiry it has come to his notice that accused Jaspal Singh and Munish Kumar committed fraud of Rs. 7,45,000/- with the complainant. When he was cross-examined in the court he deposed that complainant party went abroad but accused did not arrange work permit for them as per contract. So, complainant came back. Furthermore, when Gurjant Singh stepped into witness box admitted that he did not get any job in foreign country and due to this reason they had come back to India. So, this thing clearly shows that accused committed fraud with the complainant and get Rs. 7,45,000/- for sending them abroad and also getting them work permit but later on they failed to do so.

18) Further, counsel for the accused argued that no any document was handed over to the IO by the complainant regarding any dealing between the parties, nor any document regarding their stayed in delhi or going abroad as per their version was given to IO by the complainant party. Even the passport of the complainant had also not seen during the time of evidence in the court. So, on the behave of oral evidence it could not be established that accused committed such offence. However, on the other hand accused have not denied the agreement Ex. PW1/G nor his endorsement Ex. PW1/H and also not denied cheque Mark A, Ex. PW1/A, Ex. PW1/B.

19) From the above discussed evidence the case of prosecution stands fully proved against the accused Jaspal Singh. Apart from minor discrepencies the defence counsel has not been able to extract anything fruitful in cross examination of prosecution witnesses. Pritam Singh and Gurjant Singh complainant while appearing in the witness box have narrated each incident as happened in the entire episode with them and their testimony has been duly supported by Pw2 to Pw9. The witnesses in whose presence the payment was made have fully corroborated and supported the testimony of complainant Pritam Singh and Gurjant Singh. Nothing has come in their cross examination. All these witnesses were unanimous regarding material particulars of the case and narrated the incident in the same manner as alleged by the prosecution. Not only this the prosecution has also proved on the record the place where the complainant managed to give money to accused for sending them to South Africa. The agreement, cheques, Memo as Ex Pw1/B, Ex. PW1/D, memo

Ex. PW1/E and Ex. PW1/F on the basis of which the Jaspal Singh accused tried to returned back the money to complainant Pritam Singh and Gurjant Singh but he was failed to returned back the same have been proved on record. Perusal of file shows that prosecution witnesses were examined after considerable time gap and therefore some discrepancies and contradictions are bound to occur and if these are not there, the witnesses could be categorized as tutored witnesses. It is unrealistic to expect a witness to be a human tape recorder. The witness cannot be expected to have a photographic memory and to recall each and every minute detail of an incident. Inconsistencies, exaggeration and embellishment and also minor contradictions are immaterial and could be ignored as they do not come to the root of the matter and does not effect the veracity and broad feature of the prosecution story. Every omission is not a contradiction. The so called improvements do not in any way introduce a new facet of the case. Doubts would be reasonable if they are free from a zest for extract speculation. From the evidence led before the Court, the case of prosecution as discussed above stands fully proved.

20) Furthermore, in the aforementioned evidence brought on record by the prosecution there is no any specific allegations has been mentioned against the accused Balwinder Kaur. So, Just on the basis that his name is included in the report under section 173 Cr.P.C she can not be punished for any offence.

21) Keeping in view the above said discussion it is clear that accused Jaspal Singh in conspiracy with accused Munish Kumar (Since

PO) deceived the complainant with fraudulent/dishonest intention for handing over Rs 7,45,000/- to the accused for sending the complainant to South Africa on work permit and later on also refused to return the amount to the complainant. Accordingly, I hold the accused Jaspal Singh guilty u/s 420, 120-B IPC and is convicted as such. However, in absence of any evidence accused Balwinder Kaur is acquitted from the charges levelled against her under section 420, 120-B of IPC. Let the convict Jaspal Singh be heard on quantum of sentence.

Pronounced
01.04.2019.

sd/- Simrandeep Singh Sohi
Judicial Magistrate, Ist Class
Zira