

Akhtar Beg Vs State of H.P.

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 10, 2016

Acts Referred: Penal Code, 1860 (IPC) - Section 419, Section 420

Citation: (2016) 4 HimLR 2412

Hon'ble Judges: Mr. Ajay Mohan Goel, J.

Bench: Single Bench

Advocate: Mr. Mehar Chand Thakur, Advocate, for the Petitioner; Mr. V.S. Chauhan, Addl. Advocate General with Ms. Parul Negi, Dy. Advocate General, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Mohan Goel, J. - By way of present petition, the petitioner has challenged the judgment passed by the Court of learned Sessions Judge,

Chamba in Criminal Appeal No. 32 of 2015 dated 30.3.2016 vide which learned appellate Court has upheld the judgment of conviction passed

against the petitioner by the Court of learned Judicial Magistrate 1st Class, Chamba in Crl. Case No. 537 of 2013 decided on

13.5.2015/21.5.2015.

2. The case of the prosecution was that complainant Sardari Lal was working as a general worker (waiter) in Yatrika Hotel at Kangra and on

5.1.2002 accused stayed in the said hotel with his family. Before leaving the Hotel, accused enquired from the complainant about his qualifications

and particulars and he (accused) also told him (complainant) that he could assist him in procuring some job in his department, in which he was

working. Complainant expressed his intent to procure the job and accordingly on 11.1.2002 accused called the complainant telephonically to

Chamba assuring him that his work was nearly done. Complainant accordingly reached Chamba on 12.2.2015 and there accused took certificates

of the complainant from him and accused himself thereafter wrote a letter to the General Manager, Power Grid India, Company and told the

complainant that he would be getting appointment letter within one or two days, for which a party was required to be given to some officers. On

this pretext, accused took Rs. 5,000/- from the complainant. Subsequently, as per the prosecution, accused told the complainant that the entire

amount has been spent and accused had also spent some money from his own pocket and asked the complainant to pay a sum of two-three

thousand more on the pretext of completing some documentation work. Complainant accordingly paid another sum of Rs. 2,000/- to the accused

and thereafter he returned back to Kangra on the assurance of accused that he will get the appointment letter within a week. After two days,

complainant received telephonic calls from accused, who told him that there was some obstacle in the way of his appointment and accused also

told him that there were two vacancies for the same post and both of them were required to be filled up simultaneously. The accused asked the

complainant to bring with him another acquaintance of his. On this, the complainant got suspicious and narrated the entire story to his colleague

who advised him not to give any more money to accused without getting the appointment letter. When complainant did not pay any money, as

demanding by the accused, the accused started calling him over telephone. Accused used to make 4-5 telephone calls each day to the complainant

stating that in case he did not pay additional money, the amount earlier paid by him would go waste. This continued for about 25 days and

thereafter one day accused told the complainant that he was going to Chandigarh and asked the complainant to meet at Nurpur to pay him money

assuring him that his work would be done.

3. As per prosecution, the complainant could not go to Nurpur and the accused spent his entire day making telephone calls to him. This conduct of

the accused made it evident to the complainant that accused had cheated him and accordingly he made a written complaint to the police, on the

basis of which FIR was registered.

4. During the course of investigation, Investigating Officer procured copy of register from Hotel Yatrika and also procured a diary from another

victim Ishwari Kumar who was also cheated by the accused in a similar manner. An Ikrarnama (agreement) was also procured from one Madho

Ram wherein accused had agreed to return a sum of Rs. 24,000/- to said Madho Ram. Investigation revealed that accused had cheated other

victims also like Rakesh Kumar, Naresh Kumar and Suresh Kumar by inducing them to pay money in the month of February, 2001.

5. After completion of investigation challan was presented against the accused. As a prima facie case was found against him, he was charged for

commission of offences punishable under Sections 419 and 420 IPC, to which he pleaded not guilty and claimed trial.

6. On the basis of material produced on record by the prosecution, learned trial Court held that the prosecution had proved beyond reasonable

doubt that accused had caused wrongful loss to the victims Rakesh Kumar, Naresh Kumar and Suresh Kumar by inducing them to part with the

money and thereby procured wrongful gain for himself by deceiving the above victims with false promise of procuring them the job of Vidya

Upasak which he knew he could not fulfil. On these bases, learned trial Court held that the guilt of the accused under Section 420 IPC stood

established beyond reasonable doubt. Accordingly, learned trial Court convicted the accused for commission of offence punishable under Section

420 IPC and sentenced him to undergo rigorous imprisonment of three years with fine of Rs. 5,000/-.

7. This judgment passed by the learned trial Court was challenged by the accused before the learned appellate Court. Learned appellate Court

upheld the judgment of conviction passed by the learned trial Court and held that in the present case the promise of providing job of Vidya Upasak

to the victims by the accused was not within his power or capacity and in these circumstances the conduct of the accused could not be stated to be

innocent. It further held that receipt of money from the complainant on representation of providing job to them which he could not provide was not

within his domain and this was sufficient to constitute the offence of cheating. Learned appellate Court also held that dishonest intention of the

accused was writ large in his conduct of representing the victims that he could secure job for them and then to receive money from them in

consideration thereof with full knowledge that he could not fulfil his promise in any legal manner. Learned appellate Court held that the accused

allured and induced the victims to deliver money which he had taken from them and all the transaction was done by the accused dishonestly.

Neither the accused had any acquaintance nor he was having any capacity to provide job to them and thus he received money from the victims

with dishonest intention. Accordingly, the learned appellate Court dismissed the appeal filed by the accused.

8. Feeling aggrieved by the said judgment passed by the learned appellate Court, the present revision petition has been filed by the petitioner.

9. I have heard the learned counsel appearing for the parties and have also gone through the records of the case.

10. The prosecution, besides others, examined 5 witnesses who were victims of the accused. These witnesses PW1-Suresh Kumar, PW2-Naresh

Kumar, PW3-Rakesh Kumar, PW4-Manoj Kumar and PW5-Sardari Lal, that is, the present complainant.

11. PW1-Suresh Kumar proved on record that the accused cheated him with a false assurance of procuring a job for him and as a result of said

false inducement, the victim had paid an amount of Rs. 80,000/- on different dates to the accused. He also stated that he was introduced to the

accused by Hans Raj. This witness has stated that he had given money to the accused to secure the job of Vidya Upasak for himself. According to

him, he paid money to the accused on a demand raised by accused in this regard and not out of his own free will and volition. PW1 also deposed

that the accused has also taken his certificates.

12. Similarly, PW2-Naresh Kumar also stated that Hans Raj asked him to meet accused if he was interested in procuring some job and he went to

the house of accused and gave a sum of Rs. 10,000/- along with his certificate in the presence of Hans Raj and Suresh Kumar. According to this

witness, he thereafter paid an amount of Rs. 12,000/- to the accused in the presence of Hans Raj in lieu of accused procuring a job for him. As per

him, he paid an amount of Rs. 42,000/- but neither the money was returned back nor the accused secured any job for him.

13. PW3-Rakesh Kumar also deposed that he was induced by the accused to pay in all an amount of Rs. 51,000/- in lieu of the cost for procuring

the job of Vidya Upasak in his favour. He further deposed that he was introduced to the accused by Hans Raj.

14. PW4-Manoj Kumar another victim of the accused stated to have paid an amount of Rs. 40,000/- to the accused on various dates on the

assurance of the accused to provide him the job of Vidya Upasak which job was never provided to him. He also deposed that money paid by him

to the accused was also not returned back.

15. Complainant Sardari Lal entered into the witness box as PW5 and he also stated the mode and manner in which he was cheated by the

accused.

16. In all in order to prove its case, prosecution had examined 16 witnesses in support of its case.

17. It was held by the learned trial Court that it was clear from the depositions of all victims by the accused who had deposed in the Court that

accused assured that he could procure job of Vidya Upasak for them. A perusal of the judgment passed by the learned trial Court and the learned

appellate Court demonstrates that the entire evidence produced on record by the prosecution was minutely gone into by the learned trial Court and

after examining the same, the learned trial Court held that the prosecution had proved beyond reasonable doubt commission of offence punishable

under Section 420 IPC against the accused. The findings so returned by the learned trial Court have been upheld by the learned appellate Court.

18. Learned counsel for the petitioner could not demonstrate as to how the finding of guilt returned by the learned trial Court and affirmed by the

learned appellate Court was either perverse or not borne out from the records of the case. He could not satisfactorily explain as to what was the

discrepancy or inconsistency or contradiction in the deposition of the prosecution witnesses who were the victims of the accused and who had in

unison stated that they were cheated by the accused and were made to impart money by the accused on assurance of providing them jobs. These

witnesses have also been subjected to cross examination and their credibility could not be impinged by the defence. Besides, the testimony of said

witnesses is not only consistent but the same inspires confidence of this Court and is also trustworthy.

19. In my considered view the findings returned by the learned trial Court after appreciation of the material produced on record by the prosecution

are correct finding. There is neither any perversity nor any infirmity that the findings so returned by the learned trial Court. The prosecution had

successfully proved beyond reasonable doubt that the accused had cheated the complainant and the victims.

20. Similarly, the judgment of learned appellate Court vide which it has upheld the judgment passed by the learned trial Court and also not be

stated to be perverse. Learned appellate Court after appreciation of the material on record as well as the findings returned by the learned trial

Court has rightly dismissed the appeal and upheld the judgment passed by the learned trial Court.

21. It has been held by Hon"ble Supreme Court in *Alpic Finance Ltd. v. P. Sadasivan and another*, (2001) 3 Supreme Court Cases 513 as

under:-

x x x x To deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to

be false. x x x x

22. It is well settled law that the jurisdiction of High Court in revision is severely restricted and it cannot embark upon re-appreciation of evidence.

The High Court in revision cannot in absence of error on a point of law, re-appreciate evidence and reverse a finding of law.

23. It has been further held by the Hon"ble Supreme Court in *Janta Dal v. H.S. Chowdhury & others*, 1992 (4) SCC 305 that the object of the

revisional jurisdiction was to confer power upon superior criminal Courts a kind of paternal or supervisory jurisdiction in order to correct

miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment

which has resulted on the one hand, or on the other hand in some undeserved hardship to individuals.

24. The Hon"ble Supreme Court in *Ram Briksh Singh and others v. Ambika Yadav and another*, (2004) 7 Supreme Court Cases 665, has again

held that Revisional Court can interfere with the findings of lower Court where the Courts below have overlooked material evidence.

25. Thus it can be safely inferred that this Court has to exercise its revisional powers sparingly. Though, this Court is not required to act as a Court

of appeal, however, at the same time it is the duty of the Court to correct manifest illegality resulting in gross miscarriage of justice. However, I do

not find any manifest illegality with the judgments passed by the learned Courts below in the present case.

26. Therefore, in my considered view what has been observed above I do not find any merit in the present revision petition and the same is

dismissed.

27. However, before parting with the judgment in my considered view, it is evident from the facts of the present case that most of the victims of the

accused were introduced to him by Hans Raj son of Shri Jayotiya, R/o Vill. Bagoli, Pargana Gudiyal, Tehsil and District Chamba. Not only this,

the case of the victims itself is that they paid money to the accused on his assurance that he will provide them the job of Vidya Upasak. In my

considered view in the present case not only the accused is guilty of the offence for which he has been convicted but the act of Hans Raj who was

introducing the victims to the accused also requires investigation and the act of the victims of paying money to the accused for procuring the job of

Vidya Upasak which job admittedly is a Government job also requires investigation because even the act of Hans Raj and of the victims paying

money to the accused to procure a Government job is an offence. Accordingly, the prosecution is directed to file cases against all the victims

including Hans Raj and proceed against them in accordance with law. The revision petition stands disposed of in the above terms.

28. A copy of this judgment shall be forwarded to the Director General of Police, Shimla, H.P., by the office of learned Advocate General, who is

directed to issue necessary directions in this regard to the concerned Superintendent of Police. Superintendent of Police shall file a compliance

affidavit in this Court within eight weeks from today. For this limited purpose the case shall be listed on 20.10.2016.