

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Revision No. 264 of 2016.

Reserved on: 22nd May, 2019.

Date of Decision: 28th June, 2019.

Akhtar Beg

.....Petitioner.

Versus

State of H.P.

....Respondent.

Coram

**The Hon'ble Mr. Justice Sureshwar Thakur,
Judge.**

Whether approved for reporting?

For the Petitioners: Mr. Mehar Chand Thakur,
Advocate.

For the Respondent: Mr. Hemant Vaid & Mr. Desh
Raj Tahkur, Addl. A.Gs. With
Mr. Y.S. Thakur, and, Mr.
Vikrant Chandel, Dy. A. Gs.

Sureshwar Thakur, Judge.

The instant Criminal Revision Petition, stands directed by the petitioner/accused/convict, against, the judgment rendered on 7.5.2016, by the learned Sessions Judge, Chamba, H.P., upon, Cr. Appeal No. 29/2015, wherethrough, he affirmed the

judgement of conviction and sentence, as, recorded, upon, the accused/petitioner herein, by the learned trial Court.

2. The facts relevant to decide the instant case are that complainant Sardari Lal lodged a complaint against the accused, and, on its basis FIR No. 50 of 2002, of 1.3.2002, has been registered in Police Station Sadar, Chamba. Complainant reported that on 5.1.2002, accused stayed in hotel "Yatrika" at Kangra. He inquired about the qualification of the complainant and assured him to provide some job in his department and called him to Chamba. Complainant reached Chamba on 12.2.2002. Accused took his certificate and wrote a letter to G.M., Power Grid India (Company) and assured complainant that he will get appointment within 2-3 days and on the pretext of giving some party to the Officer, took Rs.5000/- from the complainant. Thereafter, accused on the pretext that he had spent the amount more that he had received from the complainant, he demanded additional sum of Rs.2,000/- and Rs.3000/- on the pretext of completing some documents. Accused had

taken Rs.2000/- from the complainant. Accused assured him that he will get appointment letter within a week. The accused again duped complainant that there are two vacancies for the same post which were to be filled in simultaneously and asked him to bring one more boy of his acquaintance. On this complainant got suspicious and narrated the incident to his colleague, who advised him not to give more money without getting appointment letter and when complainant stopped paying money, accused tried to contact him telephonically 4-5 times a day and had said that if he does not pay the additional amount, then the entire amount paid by him would get waste. Thereafter accused called him to Nurpur, but complainant did not went to him nor paid money. Accused again tried to contact him telephonically and conduct of the accused clear that he is cheating the complainant. Thereafter, he wrote a complaint to the Police, and, the police started investigation in the case. The Investigating Officer recorded the statements of the witnesses, and, thereafter

completed the other codal formalities relating to the investigations.

3. On conclusion of the investigations, into the offence, allegedly committed by the accused, a report under Section 173, of, the Code of Criminal Procedure, stood hence prepared, and, filed before the learned trial Court.

4. The accused/petitioner herein stood charged by the learned trial Court, for his, committing offences, punishable under Section 419, and, under Section 420 of the IPC. In proof of the prosecution case, the prosecution examined 15 witnesses. On conclusion of recording of the prosecution evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure, hence stood recorded by the learned trial Court, wherein, he claimed innocence, and, pleaded false implication in the case.

5. On an appraisal of the evidence on record, the learned trial Court, returned findings of conviction upon the accused/petitioner herein, for his, committing an offence punishable under Sections 420 of the IPC. In an appeal preferred therefrom by the

accused/petitioner herein, before the learned Sessions Judge concerned, the latter affirmed the apposite findings of conviction, and, sentence, as, recorded in the judgment pronounced by the learned trial Court.

6. The the petitioner herein/accused, stands aggrieved, by the findings recorded by the learned Sessions Judge concerned, in, affirmation to the judgment of conviction recorded against him, by the learned trial Court. The learned counsel appearing for the petitioner herein/accused has concertedly, and, vigorously contended qua the findings of conviction, recorded by the learned Sessions Judge concerned, rather standing not based, on, a proper appreciation of the evidence on record, rather, theirs standing sequelled by gross mis-appreciation, by him, of the material on record. Hence, he contends qua the findings of conviction warranting reversal by this Court, in, the exercise of its revisional jurisdiction, and, theirs being replaced by findings of acquittal.

7. On the other hand, the learned Deputy Advocate General has with considerable force, and,

vigour, contended qua the findings of conviction recorded by the learned Sessions Judge concerned, rather standing based on a mature and balanced appreciation, by him, of the evidence on record, and, theirs not necessitating any interference, rather theirs meriting vindication.

8. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

9. The prosecution, to bring home, the guilt of the accused has examined one Hans Raj, as PW-1, and, the latter in his testification, comprised in his examination-in-chief, has echoed that in the year, 2001, the accused informing him qua a post of Vidya Upasak lying vacant, besides asking him to bring his testimonials. He has further testified that the accused, asked him to pay Rs.10,000/-, on the pretext of his being acquainted with the selection board, and, that he would procure the job for him. He has further testified, that, he had paid the afore sum to him, and, in total he had been induced, on different dates, to part with a sum of Rs.1,40,000/- rather by the

accused, on the afore pretext of his securing for him, and his wife, job of Vidya Upasak. He has further testified that he had not been issued any receipt by the accused. Moreover, he has further echoed in his testification, qua his coming to know through newspapers, that the appellant had been arrested, for the commission of offence, of, cheating rather many other persons, and, when he met him, and, on inquiry, he informed him, that he will get him appointed after his release.

10. PW-2, Anjana Kumari, is the wife of PW-1, she has also in her examination-in-chief hence rendered a testification rather in tandem with the testification rendered by PW-1. She further testified qua her husband, telling her qua the accused, demanding a sum of Rs.2000/-, on the pretext of his securing, for her, a job of Vidya Upasak. Moreover, she has further testified qua hers visiting the house, of the accused with her husband, and, hers, on different dates, hence making payment to the accused, however, no job was secured for her.

11. PW-3, Kuldeep Kumar is other victim in the instant case. He in his testification has echoed qua his being induced by the accused, in the month of June, 2000 to part with a sum of Rs.10,000/- on the pretext of his securing to him, a job of Vidya Upasak, and, that in total he had been induced, on different dates, to part with a total sum of Rs.27,000/- by the accused, however, no job was provided to him. PW-5 Sardari Lal is the complainant, and, he in his examination-in-chief, has, rendered a testification bearing concurrence with the averments, borne in complaint, embodied in Ex.PW5/A.

12. PW-6 Ravi Sharma has deposed that he was Coordinator in Hotel Yatrika, and, has produced the copies of entries made in the apposite register, entries whereof borne in Ex.PG to Ex.PH, and, they were taken into possession under memo Ex.PW6/A. PW-8 Praveen Kumar, and, PW-10 Chaman Lal are the witnesses to agreement borne in Ex.PW8/C, in pursuance whereto the accused had agreed to repay a sum of Rs.24,000/- to one Madho.

13. From a perusal of the statements of the prosecution witnesses, and, the record of the learned trial Court, it stands borne out, qua all the victims hence making articulations, in their respective testifications, qua the accused promising, to procure, for them, job(s) of Vidya Upasak, and, in lieu thereof, the accused demanding money(ies) from them, and, the demands, of, money, being parted with by them, vis-a-vis, the accused. Though, all the afore victims, were subjected to a scathing cross-examination, by the learned defence counsel, however, their credibility remained unimpugned, during course(s) thereof. The testimonies, of the afore witnesses, are not only consistent but they also inspire the confidence, of, this court, (a) given, the learned defence counsel while subjecting the afore witnesses/victims, to cross-examination(s), his being unable to bring forth, any elicitation from each, vis-a-vis, theirs rather falsely implicating the accused in the commission, of, the charged offence, more so, with no proven animosity standing established against the accused. Furthermore, the onus to prove the false implication,

of the accused, in the case at hand, is always upon the accused, and, he was enjoined to lead cogent evidence, for, proving his false implication, and, when the afore anus has remained undischarged, (b) more so, with the evidence as existing on record, against the accused, cogently proving qua the accused hence deceiving the victims, and, in course thereof, his inducing them, to pay sums of money, under the allurements of his securing jobs, of, Vidya Upaska to each. In aftermath, the afore deception(s) or inducement(s) purveyed by the accused, vis-a-vis, the proven victims, comprised in his alluring them hence to pay sums of money, to him, on pretext of his securing jobs for them, is, embodied rather with the requisite mens rea.

14. Since, the accused had allured or induced the victims to pay sums of money to him, on the pretext, of his, securing jobs of Vidya Upasak to them, and, when he was not holding the requisite powers or capacities or authorities, hence, to provide employment to them, rather hence is sufficient to constitute, the offence of cheating. Consequently,

both the learned trial Court, as well as, the learned first appellate Court, obviously hence have not committed, any legal error, in, convicting the accused, for his committing an offence punishable under Section 420 of the IPC.

15. For the reasons which have been recorded hereinabove, this Court holds that the learned Sessions Judge concerned, as also, the learned trial Court, have appraised the entire evidence on record in a wholesome and harmonious manner, apart therefrom, the analysis of the material on record by the learned Courts below, does not suffer, from any gross perversity or absurdity of mis-appreciation, and, non appreciation of germane evidence on record.

16. Consequently, the instant revision petition is dismissed. In sequel, the judgment(s) impugned hereat are affirmed and maintained. The learned trial Court is directed to forthwith execute the sentence against the accused. All pending applications also stand disposed of. Records be sent back forthwith.

28th June, 2019.
(jai)

(Sureshwar Thakur)
Judge.