

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

Cr. Revision No. 303 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 Thakur, 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 10.6.2016, by the learned Sessions Judge, Chamba, H.P., upon, Cr. Appeal No. 23/2015, 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 Suresh Kumar moved an application under Section 156(3) of the Cr.P.C., before the learned Chief Judicial Magistrate, Chamba, alleging therein that in the years 2000-2002, the accused induced him to pay money to him on different dates on the promise of procuring him job of Vidya Upasak in Education Department, and, in total, the accused had induced the complainant to pay a sum of Rs.80,000/-. However, neither any job was procured nor the accused returned the money to the complainant. The application of the complainant was forwarded to the police for investigation, on the basis of which FIR No.197 of 202 of 25.7.2002 under Section 420/34 of the IPC was registered against the accused and his wife Praveen Begum (since deceased). During the investigation, it has also come to the notice of the investigating officer that the accused had cheated victims of the present case and so many other

persons. In the present case Rakesh Kumar, Naresh Kumar, and, Suresh Kumar had been cheated by the accused by inducing them to pay a sum of Rs.2,000/-, Rs.12,000/- and, Rs.8,000/- respectively, in February and March, 2001, in association with his wife. The Investigating Officer recorded the statements of the witnesses, and, thereafter completed the other 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 an offence, punishable under Section 420 of the IPC. In proof of the prosecution case, the prosecution examined 10 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 Suresh Kumar, as PW-1, and, the latter in his testification, comprised in his examination-in-chief, has rendered a testification bearing concurrence with the averments made in his complaint, borne in Ex.PW1/A, on the basis of which

FIR Ex.PW1/B stood registered at the police station concerned. He in his testification has echoed qua the accused and his wife cheating him, on different dates, for a total sum of Rs.80,000/- on the pretext of his securing for him a job of Vidya Upasak. He has further testified qua neither the accused securing job for him nor returning his money to him.

10. PW-2 Naresh Kumar is also one of the victims. He in his testification, comprised in his examination-in-chief, has echoed qua in the month of August, 2000, Has Raj asking him to meet the accused in case he is interested in procuring job for him. On this he visited the accused along with Hans Raj and Suresh Kumar, and, handed over a sum of Rs.10,000/- to him along with his certificates. He continued to testify qua the accused assuring him that there is backlog of vacancies, which are to be filled in, within 2-3 months after some formalities. He has further testified qua the accused inducing him, on different dates, to part with a total sum of Rs.42,000/-, however, no job was provided to him.

11. Rakesh Kumar, PW-3, in his testification, comprised in his examination-in-chief, has echoed qua Hans Raj meeting him in June, 2000, and, informed him qua the accused promising to secure job of Vidya Upasaka to him, as, he has acquaintance in selection board, and, for this he has to pay Rs.10,000/- to the accused. He continued to testify that initially he paid a sum of Rs.10,000/- to him, and, thereafter also on different dates paid more money to the accused, however, no job was provided to him by the accused. PW-4, Surinder Kumar has testified qua the complainant Suresh Kusmar borrowing a sum of Rs.10,000/- from him by mortgaging his land with him as he was in need of money to be paid to the accused for securing job of Vidya Upasak. PW-5 Surinder Kumar, has deposed that Rakesh Kumar had borrowed from him a sum of Rs.20,000/- as he wanted to secure job of Vidya Upasak.

12. 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 elicitations 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 Upaskas 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.

13. 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.

14. 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.

15. 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.