

[2012] 9 S.C.R. 1057

JASVIR KAUR

v.

STATE OF PUNJAB

(Criminal Appeal No. 1961 of 2012)

NOVEMBER 26, 2012

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Sentence / Sentencing - Offence of cheating - Appellant's husband was Head Constable in the Punjab Police - Allegation that appellant and her husband extracted money from the informant by making false promise that a job would be arranged for him in the Police - Both the accused, the appellant and her husband were found guilty of cheating by the courts below u/s.420 IPC and both were given the same punishment, i.e. imprisonment for two years - Notice issued by Supreme Court on the question of sentence in the case of appellant - Held: Though, both appellant and her husband were convicted for the same offence, it does not necessarily follow that they should be punished in the same way - The courts below overlooked their relative role in the commission of the offence - From the prosecution case and the evidence of witnesses it is evident that the primary role in the commission of the offence was of the appellant's husband, and the appellant had only a subsidiary role - It also needs to be kept in mind that she is a woman - In view of the aforesaid facts, the appellant deserves a lesser punishment than the other accused, her husband - Sentence of one year imprisonment to the appellant would meet the ends of justice - Penal Code, 1860 - s.420 - Administration of criminal justice.

Hiralal Mallick v. State of Bihar, (1977) 4 SCC 44 - referred to.

Case Law Reference:

(1977) 4 SCC 44

referred to

Para 7

1057

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1961 of 2012.

From the Judgment & Order dated 28.11.2011 of the High
Court of Punjab & Haryana at Chandigarh in Criminal Revision
B No. 2576 of 2011.

J.P. Dhanda, Abhijeet Sah for the Appellant.

V. Madhurkar, AAG, S. Mathur (for Kuldip Singh) for the
Respondent.

C The following Order of the Court was delivered

ORDER

1. Leave granted.

D 2. The appellant along with her husband has been
convicted under Section 420 of the Penal Code and both of
them are sentenced to imprisonment for two years and a fine
of Rs.2,000/- with the default sentence of 15 days'
E imprisonment.

3. The special leave petition giving rise to the present
appeal was filed both by the present appellant as petitioner
No.1 and her husband - Ginder Singh as petitioner No.2. The
special leave petition at the instance of the husband was
F dismissed and in case of the appellant, notice was issued only
on the question of sentence. We, accordingly, proceed to
consider the appeal to that limited extent.

4. According to the prosecution case Ginder Singh who
G was a Head Constable in the Punjab Police extracted
Rs.70,000/- from the informant Angrej Singh by making the false
promise that he would arrange for a job for him in the Police.
The deal was struck at Rs.1,40,000/-; half of which, i.e.,
Rs.70,000/- was to be paid in advance and the balance half,
H after the employment was made. It is further the prosecution

case that on September 22, 2002, the informant paid Rs.50,000/- to Ginder Singh at his quarter in the presence of his wife. Ginder Singh took the money and handed it over to his wife, the present appellant, who counted it before the informant. A few days later both the accused came to the house of the informant to collect the balance amount of Rs.20,000/-. Needless to say that neither any employment was provided to the informant nor was the money refunded to him.

5. Both the accused were tried by Judicial Magistrate, 1st Class, Faridkot, who, by his judgment and order dated March 29, 2010, passed in Criminal Case No.543 dated 14-10-2005 (arising out of FIR No.22 dated June 2, 2004), convicted and sentenced the accused, as noted above.

6. Their appeal (Criminal Appeal No.75 of 14.10.2005) was dismissed by the judgment and order dated September 30, 2011 by the Additional Sessions Judge, Faridkot and their revision [(Criminal Revision No.2576 of 2011) (O&M)] was similarly rejected by the High Court without any modification in the conviction or sentence vide judgment dated November 28, 2011.

7. Coming now to the issue of punishment, sentencing of the convicted accused which is at the heart of the administration of criminal justice is both a delicate and difficult task. In *Hiralal Mallick v. State of Bihar*¹ Krishna Iyer, J. quoted the English Judge Henry McCardie as saying "Trying a man is easy, as easy as falling off a log, compared with deciding what to do with him when he has been found guilty". Unfortunately, however, the question of sentencing does not receive due importance and the requisite application of mind by the courts. In our country, there is very little legislative, judicial or any other kind of guidance available to meaningfully deal with the question of sentencing. The absence of any guidelines makes the task of the court more difficult and casts a heavy responsibility on it to

1. (1977) 4 SCC 44.

A calibrate the due punishment that might be awarded to a convict, taking into consideration all the relevant facts and circumstances. It is, however, regrettable that the courts hardly give the question of sentencing as much attention and application of mind as it deserves. The present is a case in point. As seen above, both the accused, the wife and the husband have been found guilty of cheating and both of them have been given the same punishment, i.e., imprisonment for two years and a fine of Rs.2,000/-. Though, both the accused, the wife and the husband are convicted for the same offence, it does not necessarily follow that they should be punished in the same way. What seems to have been overlooked is their relative role in the commission of the offence.

8. From the prosecution case and the evidence of witnesses it is evident that the primary role in the commission of the offence was of Ginder Singh, the husband, and the wife (the present appellant) had only a subsidiary role. It also needs to be kept in mind that she is a woman. In view of the aforesaid facts, the appellant deserves a lesser punishment than the other accused, her husband who played the main role in the commission of the offence.

9. In light of the discussion made above, we are of the view that a sentence of one year imprisonment to the appellant would meet the ends of justice. We, accordingly, modify and reduce her sentence of imprisonment from two years to one year leaving the fine undisturbed.

10. The appeal is allowed to the limited extent, as indicated above.

G B.B.B.

Appeal Partly allowed.