

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1961 OF 2012
(Arising out of SLP (Crl.) No. 2162 of 2012)

JASVIR KAUR

.....APPELLANT(S)

VERSUS

STATE OF PUNJAB

.....RESPONDENT(S)

ORDER

Leave granted.

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' imprisonment.

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 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.

According to the prosecution case Ginder Singh

who 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, 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.

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.

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.

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 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

¹ (1977)4 SCC 44

they should be punished in the same way. What seems to have been overlooked is 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 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.

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.

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

.....J
(Aftab Alam)

.....J
(Ranjana Prakash Desai)

New Delhi;
November 26, 2012.