

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 508 of 2010**

- The State of Madhya Pradesh

---- Petitioner**Versus**

- Ram Lakhan, aged about 43 years, S/o Shri Ram Kisan Upadhayay, R/o Tilai, Police Station Janjgeer, Bilaspur (M.P.)

---- Respondent

For State

Mr. Ashish Shukla, Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****21.10.2016**

1. This Court on 05.02.1999 ordered for calling of record. However, a report has been received from the concerned Court intimating that the said record of the case of the trial Court appears to have been destroyed as per entries made in the Register dated 27.05.2002.
2. In view of the report, we are proceeding the case on the basis of the judgment passed by the Court below.
3. By way of the present Petition leave to appeal has been sought for reversing the judgment dated 28.09.98 passed by the JMFC, Bilaspur in Criminal Case No. 679/1997.
4. Vide the said judgment the Court below has acquitted Respondent from the charge under Section 409 IPC.
5. Learned Counsel for the Petitioner referring the judgment of the Judicial Magistrate, First Class dated 28.09.98 submits that the Court

below has not properly appreciated the evidence of PW/1- Susdhakar Atle, Branch Manager, State Bank of India who stated that after the loan was disbursed to the beneficiaries, they have repaid the loan amount which was received by the present Respondent and he has not credited the amount received as repayment of loan to the respective Bank Account. It is alleged that the total money received by the accused was Rs. 1,06,360.64/- of which he deposited only Rs. 40,562.15/- and that he has not repaid the balance amount of Rs. 56,798.49/- to the respective Bank Account.

6. However, further from the perusal of the judgment what reflects is the fact that the same bank authority however has not been able to prove before the Court below by leading cogent evidence to show that it was the present Respondent who had received the entire amount repaid by the respective borrowers and that it was the present Respondent who had issued the certificates / receipts to the borrowers so far as repayment of money which the borrowers had made to the bank.
7. Further the impugned judgment also in paragraph 12 and 13 reflects that the Court below had also considered the fact that the prosecution has not been able to establish before the Court below as to how much money has been paid to each of borrowers and of which how much money has been received by the present Respondent accused in the instant case so as to bring home the charges under Section 409 IPC leveled against the Petitioner.
8. For the foregoing reasons the Court below has acquitted the Respondent from the case where in he was charged for the offence

under Section 409 IPC.

9. Having considered the contentions put forth by the State Counsel and perusal of the impugned judgment this Court does not find any strong case made out by the State for reconsidering the judgment of acquittal granted in favour of the Respondent. Neither is there any cogent evidence adduced both oral as well as documentary by the prosecution to bring home the offence against the Respondent accused.
10. Accordingly, the present Petition being devoid of merits deserves to be and is accordingly rejected.

**Sd/-
(P. Sam Koshy)
JUDGE**