

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.754 of 2011

Arising Out of PS.Case No. -14 Year- 2008 Thana -Bagengola District- BUXAR

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Birodhi Sah, son of Late Dhari Sah, resident of village Bhadwar, Police Station
Bagengola, District Buxar

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner : Mr. Kumar Dhirendra Pratap Singh

For the Respondent : Dr. Indihar Kumari, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

ORAL

Date: 01-05-2017

Heard learned Counsel for the petitioner and
learned Additional Public Prosecutor representing the State.

2. The petitioner stood convicted of the offence punishable under Section 409 and 420 of the Indian Penal Code by the judgment and order, dated 09.02.2009, passed by learned Judicial Magistrate, 1st Class, Buxar, in G. R. No. 355 of 2008 (Trial No. 3322 of 2008), arising out of Bagengola Police Station Case No. 14 of 2008, and sentenced to undergo rigorous imprisonment for a period of three years for each of the sections and to pay fine of Rs. 5,000/-, in default whereof, to undergo rigorous imprisonment for a further period of one year.



3. The Appellate Court of learned Additional Sessions Judge, Fast Track Court No. II, Buxar, by his judgment and order, dated 14.02.2011, affirmed the conviction, but reduced the sentence of rigorous imprisonment for a period of two years from three years.

4. The present criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, has been preferred against the said judgment and order, dated 14.02.2011, passed by the learned Appellate Court.

5. Briefly narrated, the case of the prosecution is that the petitioner, as Public Distribution System Dealer of Bhadwar Gram Panchayat, had taken 37 quintals of rice, under Sampoorna Graming Rozgar Yojana, for the purpose of distribution among the beneficiaries, on 18.01.2004. The allegation is that he did not distribute the said rice among the beneficiaries; rather, sold it on the black-market. The First Information Report came to be registered in this regard on 26.03.2008. The Police, upon completion of investigation, submitted charge sheet, whereafter trial commenced against the petitioner since he denied the charge.

6. Learned Counsel appearing on behalf of the petitioner has submitted that there is absolutely no evidence of misappropriation of rice taken by him. He has submitted



that the said 37 quintals of rice was, in fact, returned by the petitioner to the State. He has placed heavy reliance on a Supreme Court's decision, in the case of **Sardar Singh v. State of Haryana (AIR 1977 SC 1766)**, to submit that omission to return is not sufficient to constitute offence under Section 409 of the Indian Penal Code.

7. I have perused the materials on record. As has been noticed, the finding of facts of petitioner's conviction, recorded by the Courts below, is concurrent. It appears that at the trial, the prosecution adduced evidence to the effect that the petitioner was asked by the Sub Divisional Officer, Dumraon, as regards status of rice, which was supplied to him. There is no dispute that the said rice was not distributed among the beneficiaries. As a matter of fact, he was given opportunity to deposit the same quantity of rice by a particular date, which he failed to do. This is not the case of the petitioner himself that he had distributed the rice among the beneficiaries.

8. Learned Counsel for the petitioner has submitted that when the petitioner was in custody, the petitioner's son had deposited same quantity of rice with the Panchayat Secretary.

9. I am not convinced with the submission advanced on behalf of the petitioner that the evidence



adduced at the trial, which have been taken note of in the impugned judgments and orders, do not make out a case of criminal breach of trust within the meaning of Sections 406 and 409 of the Indian Penal Code. It is evident from the evidence adduced at the trial that rice, which he had received, was disposed of in violation of the trust, in which it was to be discharged. Rice was supplied to him for distribution among the beneficiaries, which he did not do. After registration of the First Information Report, same quantity of rice was deposited, which shows that the said property had dishonestly been misappropriated by the petitioner. The conviction of the petitioner, therefore, under Section 409 of the Indian Penal Code, cannot be said to be bad, requiring interference by this Court.

10. Learned Counsel for the petitioner further submitted that no offence under Section 420 of the Indian Penal Code is made out on the basis of the evidence on record inasmuch as it was never the case of the prosecution that the petitioner had dishonestly induced any person to deliver any property. Even if, according to him, it is the case of the prosecution that rice was supplied to him for the purpose of distribution among the beneficiaries under the Sampoorna Gramin Rozgar Yojana, if the petitioner failed to distribute it, it cannot be said that the petitioner had induced any person to



delivery the said property to him.

11. I am satisfied with the submission advanced on behalf of the petitioner that no offence under Section 420 of the Indian Penal Code, on the basis of the evidence adduced at the trial, can be said to have been proved beyond all reasonable doubts. The conviction of the petitioner, under Section 420 of the Indian Penal Code, is, therefore, set aside.

12. At the same time, his conviction, under Section 409 of the Indian Penal Code, recorded by the Courts below, is upheld.

13. Learned Counsel for the petitioner has submitted that the petitioner has already remained in custody for a period more than one year and he is nearly 70 years of age.

14. Considering the facts and other mitigating circumstances, the sentence of two years is hereby modified and reduced to the period of custody which the petitioner has already undergone in connection with the case arising out of Bagengola P.S. Case No. 14 of 2008.

15. This application stands disposed of accordingly.

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

(Chakradhari Sharan Singh, J.)

