

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 310 of 2007****Order Reserved on 06.03.2017****Order Delivered on 21.04.2017**

Hari Charan Ramteke, aged 52 years, son of late Shri Mahangiya Ramteke, resident of village Krantinagar, Bilaspur, police station Tarbahar Bilaspur, district Bilaspur, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh through the police station Civil Line, Bilaspur.

---- Respondent

For the Applicant	:	Shri Somnath Verma, Advocate.
For the Respondent/ State	:	Smt. Sobha Kashyap, Deputy Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. The applicant has brought this revision against the judgment dated 25.6.2007 passed in Criminal Appeal No. 46 of 2007 by the Learned Third Additional Sessions Judge, Bilaspur, Chhattisgarh, by which the judgment of conviction and order of sentence passed by the trial court against the applicant was confirmed.

2. The case of the prosecution, in brief, is that on 5.12.1997, complainant Sushila Devi Gupta (PW-5) deposited a cheque of Rs.4,97,250/- in her account No.17777 in Bank of Baroda, Bilaspur, which was received from the purchaser of land. One cheque book was issued to her bearing cheque

Nos.971861 to 971870, which were kept in the possession of her father Ratan Lal Gupta (PW-3). On 7.2.2000, father of the complainant received information from the said Bank that Rs.3,97,200/- was withdrawn from the account of Sushila Devi (PW-5) through a cheque and the amount was deposited in the account of Punaram Mahilange, the co-accused. On enquiry, it was disclosed by the Bank Manager that the applicant and co-accused Punaram Mahilange have withdrawn the amount from the account of Sushila Devi (PW-5) through a cheque bearing No. 975391 by forged signature of Sushila Devi.

3. A written complaint Ex. P/6 was submitted in police station Civil Lines, Bilaspur and on the basis of which, First Information Report Ex. P/7 was lodged. After registering the offence under Sections 420, 467, 468 and 471 of the Indian Penal Code (for short 'the IPC') against the applicant and co-accused Punaram Mahilange, the police conducted the investigation. Various documents were seized from the possession of co-accused Punaram Mahilange vide Ex. P/1 and from the applicant vide Ex. P/2. The documents i.e. the cheque book and passbook of Sushila Devi Gupta (PW-5) were seized from the possession of Ratanlal Gupta (PW-3) vide Ex. P/3. Specimen signature card of Sushila Devi Gupta, Cheque No. 975391 and the bank account slip of co-accused Punaram Mahilange Gupta were seized vide Ex. P/4. The register maintained by bank showing issuance of cheque book from Sl. No. 975391 to 975400 to the account holder of Account No. 17777 was seized vide Ex. P/5. The panchanama of property made by the applicant was prepared vide Ex. P/8. Handwriting samples of Sushila Devi were also obtained vide Exs. P/13 to P/18 and that of co-accused Punaram Mahilange vide Exs. P/19 to P/24. Further,

specimen signatures of Sushila Devi Gupta vide Exs. P/25 to P/30 and specimen signatures of co-accused Punaram Mahilange signing as Sushila Devi vide Exs. P/31 to P/42, were obtained for investigation. Documents containing simple handwritten specimen signatures and the disputed signatures were sent for examination by handwriting expert Bhopal and report thereof was obtained vide Ex. P/48. The residence of the applicant was searched vide Ex. P/49. Statements of the witnesses were recorded and on completion of the investigation, the applicant and the co-accused were charge-sheeted.

4. The applicant and co-accused were charged for the offence under Sections 420, 467 and 468 of the IPC to which they denied. The prosecution examined as many as 16 witnesses. The defence examined only one witness in which co-accused Punaram Mahilange examined himself. On being examined under Section 313 of the Cr.P.C., denying all the incriminating evidence against the applicant and the co-accused, they pleaded innocence and false implication. After giving opportunity of hearing and leading evidence to the prosecution and the defence, the impugned judgment has been passed by the learned trial Court whereby the applicant and the co-accused have been convicted under Sections 420, 467 and 468 of the IPC and sentenced to undergo RI for two years, RI for two years and RI for two years, in default of payment of fine, to further undergo RI for three months on each count.

5. The judgment of the trial court was challenged before the Sessions Court, Bilaspur in two different appeals No. 46 of 2007 and 52 of 2007. Both the appeals were decided by the impugned judgment in which the appeal

preferred by co-accused Punaram Mahilange was allowed and the conviction and sentence passed against him was set aside whereas the conviction and sentence passed against the applicant was maintained.

6. The grounds raised in this revision are that the applicant has been convicted without there being any iota of evidence against him whereas the main accused in this case has been acquitted by the appellate court below and the applicant has been falsely implicated. As per the prosecution story, it appears that the Bank Officers were also involved in this matter who have not been prosecuted as the amount was withdrawn through a forged cheque and deposited in the account of co-accused Punaram Mahilange. The police has not investigated regarding the specimen handwritings of Ratanlal (PW-3) who was in possession of the bank documents and who used to operate the bank account standing in the name of the complainant. The only piece of evidence, that is the handwriting of the applicant for issuance of new cheque book was found similar to that of the applicant, has been made the basis for his conviction. The evidence of extra-judicial confession is also not proved in this case. The opinion of the handwriting expert alone cannot be made the basis for the conviction. The finding of the trial court that it was the applicant who got issued a new cheque book is totally erroneous finding and the applicant is entitled for acquittal.

7. Learned counsel for the applicant submits that the main allegation was against co-accused Punaram Mahilange who has been acquitted of the charge whereas he was the person who was benefited by the withdrawal on the basis of the forged cheque. The evidence of handwriting expert is not specifically proved that the forged signature on the disputed cheque was the

work of the applicant. The evidence of extra-judicial confession on record shows that both the accused persons admitted their guilt in presence of witnesses. Co-accused Punaram Mahilange has been acquitted disbelieving the same whereas the conviction of the applicant has been confirmed without assigning any proper reason. Hence, the applicant is entitled for acquittal.

8. As there is no challenge to the acquittal of co-accused Punaram Mahilange by the State, the only question for determination in this revision is whether the finding of conviction against the applicant by the Courts below is a correct finding or not. The evidence of the prosecution witnesses and the material available on record is perused. The finding of the court below on this point that Account No. 17777 stood in the name of Sushila Devi (PW-5) in Bank of Baroda, in which the cheque No.975391 of Rs.3,97,200/- was presented for encashment in the bank, which mentioned the name of co-accused Punaram Mahilange as bearer of the cheque. On encashment of this cheque, amount of Rs.3,97,200/- was withdrawn from the account of Sushila Devi (PW-5) and deposited in Account No. 20450 of co-accused Punaram Mahilange. These are the admitted facts and are not challenged in this appeal. There is no need to go in detail into the evidence of the prosecution witnesses in this respect. As per case of the prosecution, the cheque book, starting from serial number 975391 was not received by Sushila Devi (PW-5) and secondly the cheque bearing No. 975391 did not bear the signature of Sushila Devi (PW-5) and these facts are disputed by the applicant.

9. During investigation, the register maintained for issuance of cheque books, the disputed cheque and the account slip were seized vide Exs. P/4 and P/5 and have been proved by the prosecution. Sub-Inspector, K.S. Rathiya (PW-6) has conducted the investigation. Application for issuance of cheque book Ex. P/11 which is also marked as Article A-2 was also seized. K.N. Bani (PW-12) stated that on the basis of Ex. P/11 marked as Article A-2, he issued the cheque book starting from Sl. No. 975391 as per the register. He has not made any further statement about the person who obtained the cheque book.

10. Mahendra Singh Thakur (PW-9) is the handwriting expert, who examined the specimen signatures of the applicant marked as S1 to S12, vide Exs. P/13 to P/24. Handwriting samples of Sushila Devi were obtained vide Exs. P/13 to P/18 and that of co-accused Punaram Mahilange vide Exs. P/19 to P/24. Further, specimen signatures of Sushila Devi Gupta were obtained vide Exs. P/25 to P/30 and that of co-accused Punaram Mahilange signing as Sushila Devi vide Exs. P/31 to P/42 with the disputed signatures Q1A, Q1B, Q2A and Q2B. This witness also compared the specimen signature kept in the bank Article A-1 with the handwriting of the applicant marked as Ex. P/21 on his diary. He reported vide Ex. P/49 that the person who has written specimen signature marked as S1 to S12 and N7 to N74 has also written the disputed marked handwriting on the cheque requisition slip Q1C and Q1D. This statement has not been challenged in his cross-examination. Thus, it is unchallenged statement of this witness that the handwriting as S1 to S12 and N7 to N74 belongs to the applicant and this handwriting has matched with the handwriting on the disputed cheque Article A-1 in part. The handwriting marked as Q1C and Q1D goes

to show that the applicant was involved in issuance this disputed cheque book which was used for encashing the amount from the account of Sushila Devi (PW-5). The handwriting marked as Q1A, B, C, D is the requisition slip for issuance of cheque book, handwriting in Q1C is the account number and Q1D is the date mentioned therein. This witness has not given any opinion regarding the signature marked as Q1A on the requisition slip, Article A2 marked as Ex. P/11 and marked as Q2A on cheque, Article A3 also marked as Ex. P/10. Only this much of evidence is available against the applicant on the basis of evidence of the handwriting expert Mahendra Singh Thakur (PW-9) and there being no challenge to this statement itself does not raise the presumption that the rest of the handwritings and signatures were also made by the applicant on the disputed papers Article A2 and A3.

11. The other evidence which has been made the basis for conviction of the applicant is the extra-judicial confession made by him. Rajendra Kumar Gupta (PW-1) has stated in his examination-in-chief that after the withdrawal took place, he was present in the bank and the President of the Businessmen Association and bank officers were also present and in their presence, the applicant admitted that the amount was withdrawn from the account of Sushila Devi (PW-5) and deposited in the account of co-accused Punaram Mahilange, which has remained unrebutted in his cross-examination. Ratanlal (PW-3) has stated that in his presence bank officers enquired from Punaram Mahilange who said that he demanded Rs.1,40,000/- from the applicant for which the applicant gave him a cheque of Rs.3,97,200/- stating that Sushila Devi was his wife. This statement has remained unrebutted in his cross-examination. H.S. Ghanetkar (PW-4) is the Branch Manager of the concerned bank, who has not given any

statement about the admission made by the applicant or co-accused in his presence. Sudeep Mukerjee (PW-8) has stated about admissions made by the applicant and co-accused. Similar is the statement of R.D. Chipde (PW-10) who is also an Officer in the same bank and that of Kuldeep Kerketta (PW-11).

12. According to the case of the prosecution, the applicant and the co-accused made an admission in front of the President of the Businessman Association and Anil Tiwari (PW-16) who has stated that he was summoned by the Bank and told by Rajendra Gupta (PW-1) that the applicant and the co-accused who were present in the bank were admitting that they have withdrawn Rs.3,97,200/- by using a forged document. He then enquired from the applicant and co-accused and both of them said that they have committed a mistake. Co-accused Punaram Mahilange told that out of Rs.3,97,200/-, he withdraw only Rs.1,37,000/- and rest of the amount is with the applicant whereas the applicant stated that he has taken Rs.95,000/- and rest of the amount was with co-accused Punaram Mahilange. He advised them to resolve between themselves. This statement has remained un rebutted in his cross-examination.

13. Punaram Mahilange (DW-1) stated in his defence, that about 7 – 8 years back, he had given Rs.1,40,000/- to the applicant and on his demand, the applicant asked him to open a new account in Bank of Baroda in which the amount was deposited by a cheque by the applicant. He was informed by the applicant that his wife has sold some land and the said money was related to that sale. This witness further stated that the applicant was in government service and for the purpose of avoiding tax, he deposited the

amount in his bank account. He further stated about some withdrawal made from his account. In cross-examination on behalf of the applicant, his statement has remained unrebutted. In this regard, co-accused Punaram Mahilange has stated that it was the applicant who prompted him to open a new account in the Bank and the cheque which is alleged to be forged was deposited and encashed in the new account opened by co-accused Punaram Mahilange from which the amount was withdrawn by the applicant and co-accused Punaram Mahilange.

14. The statement of Mahendra Singh Thakur (PW-9), the handwriting expert is that he compared the signature marked on Article A-3, the alleged forged cheque which is also marked as Ex. P/10. The signature affixed on this cheque purported to be of Sushila Devi Gupta (PW-5) marked as Q2A was also examined by him. He could not give any opinion as to who was the author of the signature on Article A-3 marked as Q2A which implies that this signature did not belong to Sushila Devi (PW-5). No question was put to this witness in cross-examination insisting that the signature marked as Q2A on Article A-3 was authored by Sushila Devi (PW-5) which gives rise to a presumption that the cheque used to withdraw the amount from the account of Sushila Devi Gupta (PW-5) and to deposit in the account of Punaram Mahilange, was a forged one and as per the prosecution case it was not challenged in defence.

15. It is the burden of the prosecution to prove its case beyond reasonable doubt and in this case prosecution has succeeded to prove that the cheque Article A-3 had a forged signature on it, which did not belong to Sushila Devi (PW-5) by the evidence of Mahendra Singh Thakur (PW-9), the handwriting

expert. Further, the evidence of Mahendra Singh Thakur (PW-9) has confirmed that the handwriting on the cheque in question was authored by the applicant, which has been further confirmed by the evidence of defence witness Punaram Mahilange (DW-1) that this cheque was produced from the possession of the applicant and presented in the Bank for encashment and this fact indicates that the applicant was in possession of this forged cheque. This conclusion is also supported by the evidence of extra-judicial confession made by the applicant.

16. Reliance has been placed on the judgment of Supreme Court in the case of **Makhan Singh Vs. State of Punjab** reported in **AIR 1988 SC 1705** that extra-judicial confession is a weak piece of evidence which cannot be relied upon to arrive at a finding of conviction. This is a case where extra-judicial confession made by the applicant is only a part of the chain of evidence which has been brought against the prosecution as discussed in detail hereinabove. The principle is settled that when an accused person appears as a witness opportunity of cross-examination is afforded to co-accused which implies that such evidence can be used against the co-accused. In this regard, the judgment of the Apex Court in the cases of **Tribhuvan Nath vs. State of Maharashtra** reported in **AIR 1973 SC 450** and **A. Deivendran vs. State of Tamil Nadu** reported in **AIR 1998 SC 2821** can be referred to. Hence, for the aforementioned reasons and after due consideration of the material available on record, it is found that the impugned judgments of the courts below do not suffer from any infirmity and it cannot be interfered with. Hence, this revision is dismissed.

17. In conclusion, the revision is dismissed. The applicant is on bail. His

bail bonds are cancelled and he is directed to surrender forthwith before the trial Court to undergo the remaining part of the sentence awarded by the trial Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi