

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 08.10.2018

Order delivered on 10.12.2018

CRR No. 467 of 2004

1. Shri Gouri Kosha Bunkar Sahkari Sanstha Maryadit Rakshapali, Tehsil Kharsiya, District Raigarh, CG through its President Shri Barat Ram R/o Rakshapali, Kharsiya, District Raigarh, CG **--- Applicant**

Versus

1. Sagar Lal Dewangan son of late Shri Kanhaiya Lal Dewangan, aged about 44 years, occupation - Weaver, R/o Rakshapali, PS Chowki Bhupdeopur, Tehsil Kharsiya, District Raigarh, CG
2. State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, CG **--- Respondents**

For Applicant	-	Shri Rama Shankar Tiwari, Advocate.
For Respondent	-	Ms. M. Asha, PL

Hon'ble Smt. Vimla Singh Kapoor, J.

CAV Judgment

By this revision petition the applicant has assailed the judgment dated 15.06.2004 passed by Additional Sessions Judge (FTC) Raigarh in Criminal Appeal No. 17/2004 affirming the conviction part of the judgment dated 03.02.2004 passed by Judicial Magistrate First Class, Raigarh in Criminal Case No. 521/2002 holding the respondent/accused guilty under Sections 409, 467 and 468 IPC. On appeal being preferred, the sentence imposed by learned Magistrate has however been reduced to the

period already undergone by him but keeping the fine of Rs. 2500/- as it is.

2. Main thrust of the applicant/complainant herein is to the restoration of the substantive sentence imposed by learned Magistrate vide order dated 3.2.2004, which has been waived by the lower appellate Court.

3. Facts in short are that accused/respondent, during his tenure as President of Gouri Kosha Bunkar Sahkari Samiti, Raksapali from 1992 to 1998, the stock of the raw material worth Rs. 22,618/- was found short. This act of the respondent/accused came to light when his successor – the applicant herein, took over the charge as President thereof. On getting the audit done, the irregularity in distribution of the raw material was found and thereafter the written report annexing the audit report was lodged with the police by the applicant himself.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted the accused/applicant under Sections 409, 467 and 468 IPC and sentenced him as described in paragraph No.1 of this order. Lower Appellate Court by the judgment impugned maintained the conviction but set aside the substantive sentence imposed by the trial Court keeping the fine sentence intact, and it is that which is under challenge in this revision.

4. Counsel for the applicant submits that looking to the material suggesting the involvement of the accused in misappropriation of the raw material worth Rs. 22,618/- mere conviction is not enough and to teach the respondent/accused a lesson, jail sentence was

necessary to be imposed to prevent recurrence of such offence in future. Lower appellate Court, therefore, has committed an error in setting aside the jail sentence, is the submission of the counsel for the applicant/complainant.

5. Respondent/accused did not ensure his representation as none is present on his behalf. State counsel however assisted the Court.

6. Heard counsel for the parties and perused the evidence on record.

7. Though the conviction has not been assailed in this revision yet this Court took into consideration the evidence of the applicant herein who has been examined as PW-2 and another witness being PW-4, the defalcation of the raw material worth Rs. 22,618/- which took place during the tenure of respondent/accused as the President of the Gouri Kosa Bunkar Sahkari Samiti, stood established, and it is hereby maintained. Even the sentence part modified by the lower Appellate court does not appear to be questionable in view of the fact that the accused, by then, had already remained in jail for more than nine months. No necessity of interference with the judgment impugned appears to be there. It too is maintained.

8. Revision is without any substance and dismissed as such.

Sd/-

(Vimla Singh Kapoor)
Judge