

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 640 of 2004

Order reserved on 03.10.2018

Order pronounced on 10.12.2018

1. Dhanush Kumar Banjare S/o. Baldev Das Banjare, aged about 34 years, R/o Fokatpara, Kasarideeh Durg, District Durg, CG.
2. Lal Singh, S/o Bhav Singh Barle aged about 48 years, R/o Tavera, P.S. Rachirai Tahsil Gunderdehi, District Durg, CG.

(Applicant No. 2 deleted and revision concerning him already abated by order dated 01.12.2014)

---- Applicants

Versus

State of Chhattisgarh, through P.S. Gunderdehi Tahsil Gunderdehi, District Durg, CG.

---- Respondent

For Applicants : Shri D.N. Prajapati and Shri Bishnu Muri, Advocates.
For State/ Respondent : Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

The accused/applicant has preferred this revision petition against the judgment of conviction and order of sentence dated 15.12.2004 passed by Additional Sessions Judge, Durg, (CG) in Criminal Appeal No. 160/2003 affirming the judgment dated 02.04.2003 passed by Additional Chief Judicial Magistrate, Durg in Criminal Case No. 445/2002 convicting the accused/applicant u/s 420/34 IPC and sentencing him to undergo RI for three years with fine of Rs. 1,000/-, in default of payment of fine to further undergo RI for three months.

2. Facts of the case, in brief, are that complainant Kewal Ram (PW-2) first met the deceased applicant Lal Singh and on his assurance to get him a job in BSP, he approached the present surviving accused/applicant and expressed his desire of securing the employment in BSP. Further case of the prosecution is that acting upon the say of accused/applicant, PW-2 through his father paid Rs. 30,000/- to him for the said purpose. When the employment could not be ensured by the accused/applicant, a report was lodged by PW-2 and after investigation the charge sheet was filed against the accused/applicant and also the deceased-accused under Section 420/34 IPC leading to framing of charge under the same section.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted and sentenced the accused/applicant as mentioned above. The findings recorded by the trial Court have been affirmed by the lower appellate Court by the Judgment impugned, and it is that which is under challenge in this revision.

4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his argument to the sentence part of the judgment assailed therein. According to him, as the incident had taken place in the year 1991, and that he has already remained in jail for a period of 01 month and 21 days, no useful purpose would be served in again sending him to jail, and therefore, the sentence imposed upon him may be reduced to the period already undergone.

5. State counsel however, supports the findings recorded by both the Courts below.

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

7. Though counsel for the accused/applicant is not inclined to press conviction of the accused/applicant, this Court thinks it appropriate to refer to the evidence of the witnesses to ascertain his guilt or innocence and therefore, it proceeds to do so.

8. From the evidence of the complainant PW-2 which has been corroborated by PW-3, PW-1 and PW-5 it is apparent that the accused/applicant in connivance with the deceased-accused had taken an amount of Rs. 30,000/- for providing employment to PW-2 in BSP, for which he was not authorized or competent. Record also shows that when PW-2 insisted the accused/applicant to get him the job, he started beguiling him on several pretexts including the one that the officer in his touch had been transferred elsewhere. It is thus established that the accused/applicant herein cheated PW-2 and induced him to deliver Rs. 30,000/- for the task. The Courts below have been fully justified in convicting the accused/applicant under Section 420/34 IPC. There is no illegality or infirmity in the conviction part of the judgment impugned warranting interference by this Court with the same. It is maintained.

Needless to say that this revision has already abated by order dated 01.12.2014 in respect of deceased-accused Lal Singh on his death.

9. As regards sentence, keeping in view the fact that the incident had taken place about 27 years back, and he has already remained in jail for a period of 01 month and 21 days, this Court is of the opinion that it would be in the interest of justice to reduce the sentence imposed on the applicant to the period

already undergone by him. Order accordingly. The accused/applicant is however, directed to pay the fine of Rs. 4,000/- more than what has been imposed by the Court below. Let the fine amount be deposited in the Court below within a period of three months otherwise this order will not be available to the accused/applicant.

10. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan