

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 28 of 2009

Ghanshyam @ Douwa Kaushik, aged about 36 years, Resident of Village Sakin Jhironi, P.S. & Tahsil – Kawardha, District Kabirdham (Kawardha) CG.

---- Applicant

Versus

- State of Chhattisgarh through the Station House Officer, Kawardha, District Kabirdham (Kawardha) CG.

---- Respondent

For Applicant	:	Shri Malay Shrivastava, Advocate
For Respondent/State	:	Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

13 /11/2018

1. The accused / applicant has preferred this revision petition against the judgment of conviction and order of sentence dated 07.01.2009 passed by Sessions Judge, Kabirdham (Kawardha) CG. in Criminal Appeal No. 31/2008 affirming the judgment dated 24.05.2008 passed by Chief Judicial Magistrate, Kabirdham (Kawardha) in Criminal Case No. 151/2008 convicting the accused/applicant under Section 403 IPC and sentencing him to undergo RI for six months with fine of Rs. 1,000/-, plus default stipulation.
2. Facts of the case, in brief, are that on 07.10.2007 on receiving an information regarding theft to be committed, the Assistant Sub Inspector, Kawardha went near Junvani pond and brought the accused persons to the police station. On inquiry, the accused persons admitted their guilt that about a month earlier therefrom they had committed theft of one bundle of barbed wire. The present applicant herein also confessed to have kept one bundle of barbed wire worth Rs. 3,500/- in his house and the same was seized also. Since the applicant could not submit the receipt, on the suspicion of theft he was arrested for the offence under Section 41 (1+4) Cr.P.C and Section 379 of IPC. As the owner of the wire so seized could

not be traced, challan was filed in the court below under Section 403 IPC after drawing Istgasha.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted the accused/applicant under Section 403 IPC and sentenced him to undergo RI for six months and pay fine of Rs. 1,000/-, in default of payment of fine he was further directed to remain in jail for two months. On revision, the judgment passed by learned Magistrate has been affirmed. Hence, this revision.
4. 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 2007, and that the applicant has already remained in jail for a period of 13 days, no useful purpose would be served in again sending him to jail by unsettling his well settled life, and therefore, the sentence imposed upon him may be reduced to the period already undergone.
5. State counsel however, supports the findings recorded by the Court 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. Vyas Narayan (PW-3) the witness to seizure has categorically stated that the barbed wire was seized from the possession of the accused/applicant herein. O.P. Joshi (PW-4) has also stated that the wire seized from the applicant was in a useable condition and that such articles normally are not kept in the houses. Furthermore, the accused/applicant has not produced any receipt etc. showing as to how he came in possession of the said barbed wire and therefore, it can safely be inferred that he had dishonestly misappropriated the same and converted to his own use.
9. Thus, in view of the factual discussion made above in the light of the evidence of the witnesses, this Court is of the opinion that the accused/applicant this honestly misappropriated and converted the barbed wire seized from him to his own use and therefore, the

Court below was fully justified in holding the accused/applicant guilty under Section 403 IPC and being so, the same is hereby maintained.

10. As regards sentence, keeping in view the fact that the incident had taken place about 11 years back and that the applicant has already remained in jail for a period of 13 days, this Court is of the opinion that it would be in the interest of justice to reduce the sentence to the period already undergone by him. Order accordingly.

11. 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