

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 276 of 2005

Order reserved on : 04.09.2018

Order passed on :23.10.2018

Kusharam Sahu S/o. Kapoor Singh, Aged about 35 years, R/o.
Village Kharcha, Police Station Charama District Kanker (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through District Magistrate, Kanker
District Kanker (C.G.)

---- Respondent

For Applicant : Mr. Sunil Sahu, Advocate
For Respondent : Ms. M. Asha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V. Judgment

1. This revision is directed against the judgment dated 22.06.2005 passed by the Additional Sessions Judge (FTC) Kanker, in Criminal Appeal No. 122 of 2000, affirming the judgment of conviction and order of sentence dated 21.06.2000 passed by the Chief Judicial Magistrate, Kanker, in Criminal Case No. 856/1997 where the learned Judicial Magistrate after holding the applicant guilty under section 409 of the IPC has sentenced him to undergo rigorous imprisonment for 2 years.

2. Case of the prosecution, in brief, is that on 17.09.1997 at about 3.30 pm, the food inspector namely U.S. Kharsan(PW-11) had inspected the fair price shop situated at village Khartha and found shortage of food grains and other items. As per the stock register, shortage of 7.06 qt sugar worth Rs. 7413, wheat 1.60 qt worth Rs. 832, salt 27.82 qt worth Rs. 2782, kerosene oil 173 liters worth Rs. 553 and rice 29.90 qt worth Rs. 21,528/-, total shortage of food items worth Rs. 33.108/-. The concerned Food Inspector submitted his inspection report to the Sub Divisional Officer (Revenue) Kanker regarding shortage of food items in the said fair price shop. On the basis of the said report (Ex.P-5), Sub Divisional Officer (Revenue) Kanker directed the Assistant Food Officer namely V. Lakda to lodge the FIR (Ex.P-7) against the applicant in Police Station Charama and on the basis of said report, offence under Section 409 IPC was registered against the applicant.

3. Having taken note of the material on record the Trial Court convicted and sentenced the Applicant as mentioned above which subsequently has been affirmed by the lower appellate Court by the judgment impugned. Hence, this revision.

4. Learned Counsel appearing for the applicant submits that he is not pressing this revision on merit and confining his argument to the sentence part thereof only. According to him, on the date of the incident, the applicant was aged about 32 years and by now he is 50 years old. He submits that the applicant had deposited the

entire defalcated amount in the Cooperative Society and that he has already remained in jail for a period of 30 days and therefore, 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 by him.

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

6. I have heard learned counsel for the parties, perused the judgment impugned and the evidence available on record carefully.

7. Considering the fact that at the relevant point of time the applicant was posted as Salesman in the fair price shop of Village Khartha and in the capacity of public servant, he was entrusted with the job in which shortage was found in the fair price shop. He entered into a conspiracy to earn illegal profits by manipulating the stock register and thus misappropriated the food items and committed criminal breach of trust. The record thus clearly suggests the involvement of the accused/applicant in manipulating the stock register and putting the fair price shop at a great loss by misappropriating the food stuffs meant to be supplied to the needy people. The trial Court has dealt with each and every aspect of the matter while noting down the judgment impugned. No infirmity is noticeable by this Court in the finding of the Courts below holding the accused/applicant guilty under

Section 409 IPC. Conviction is thus held to be proper and is maintained as such.

8. As regards sentence, keeping in view the fact that the incident had taken place about 21 years back and by now the applicant must be leading a well settled life bearing the burden of his responsibilities and the applicant has already deposited the misappropriated amount in the Cooperative Society, 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.

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

Sd/-
(Vimla Singh Kapoor)
JUDGE