

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.435 of 2005

Shaukat Ali, S/o Babu Bhai Muslman, aged about 45 years, R/o Gardarpul, Rajahara, P.S. Rajahara, (Tahsil Balod), District Durg, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the Officer-in-Charge, P.S. Rajahara, District Durg, Chhattisgarh

--- Respondent

For Applicant	:	Shri M.P.S. Bhatia, Advocate
For Respondent	:	Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

4.5.2018

1. This revision has been preferred against the judgment dated 29.10.2004 passed by the Additional Sessions Judge, Balod, District Durg in Criminal Appeal No.471 of 2002 affirming the judgment dated 20.12.2002 passed by the Judicial Magistrate First Class, Balod in Criminal Case No.173 of 2002, whereby the Applicant has been convicted and sentenced as under:

<u>Conviction</u>	<u>Sentence</u>
Under Section 420/34 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.2,000/- with default stipulation

2. As per the prosecution story, Complainant Goverdhan (PW3) was well known to co-accused (main accused) Dhanaji. Dhanaji asked Complainant Goverdhan that he knows one person who can double the amount and he asked the Complainant to give him Rs.5,000/-. It is alleged that at that time the present Applicant was with co-accused Dhanaji. When the Complainant told that he does not have Rs.5,000/-, Dhanaji asked him to arrange the amount till

the next day. Next day, the Complainant arranged Rs.600/- which he had borrowed from one Ghuraaram and went to the house of Dhanaji. Dhanaji told that he should have brought minimum amount of Rs.2,000/-. The Complainant expressed his inability to arrange the same and demanded his amount of Rs.600/- back. Dhanaji told him that the machine which could double the amount was having some problem and was not working and also told that the person who operates the machine is not available. Thereafter, the Complainant met with Dhanaji 3-4 times, but he did not refund the money. Thereafter, the Complainant lodged First Information Report (Ex.P1) against both Dhanaji and the present Applicant. The matter was investigated into by the police. On completion of the investigation, a charge-sheet was filed before the Judicial Magistrate First Class. After trial, the present Applicant and Dhanaji have been convicted under Section 420/34 of the IPC and sentenced to undergo rigorous imprisonment for 3 years and pay fine of Rs.2,000/- each with default stipulation. An appeal, being Criminal Appeal No.471 of 2002 was preferred by them, which has been dismissed and the judgment of conviction and sentence passed by the Trial Court has been affirmed. Hence, this revision by Applicant Shaukat Ali.

3. Learned Counsel appearing for the Applicant submits that there is no evidence on record against the present Applicant which could establish that the Applicant ever demanded any money from the Complainant or committed any cheating with him. As per the prosecution story, the Applicant along with co-accused Dhanaji visited to the house of the Complainant only once. The conversation took place between Dhanaji and the Complainant was not done before the Applicant as the same was done

separately in the courtyard. Therefore, it is not established that there had been any common intention on the part of the Applicant and Dhanaji. Therefore, no offence is made out against the present Applicant and he deserves to be acquitted of the charge framed against him.

4. Learned Counsel appearing for the State opposes the above submission put-forth on behalf of the Applicant and supports the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. In support of its case, the prosecution has examined total 7 witnesses. R.K. Sharma (PW1) is the Investigating Officer and Goverdhan (PW3) is the Complainant. Apart from Complainant Goverdhan, none of the witnesses have stated anything against the present Applicant.
7. As per the Court statement of Goverdhan (PW3), on the date of incident, both Dhanaji and the present Applicant had come together to his house. Though in Court statement, Goverdhan has stated that they told him that they double the note yet he has further stated that thereafter the present Applicant was asked to sit there and Dhanaji took him (this witness) towards the courtyard and talked about doubling of the note. At that time, he was not having any amount. Later on, he went to the house of Dhanaji and gave him a sum of Rs.600/-. Thereafter, when Dhanaji did not double the notes, he demanded his money back from him and when he did not receive his money back from Dhanaji, he reported the matter in the police station.

8. From a minute examination of the above evidence of Goverdhan (PW3), it is clear that he has only stated against the present Applicant that he had also visited his house along with Dhanaji and both have talked with him about doubling of note. But, this fact is not mentioned in his diary statement and FIR (Ex.P1). From the statement of Goverdhan (PW3) itself, it is clear that the Applicant was asked to sit away and Dhanaji had taken Goverdhan towards the courtyard and talked with him about doubling of note. At that time also, the present Applicant was not with them and was sitting away from them. Therefore, there is no evidence that the Applicant ever allured the Complainant about doubling of note or cheated him. From the evidence, it is also clear that whatever cheating was done with the Complainant it was done by Dhanaji only and the present Applicant's involvement is not established and there appears no common intention on the part of the present Applicant and Dhanaji. Therefore, the present Applicant is entitled to get benefit of doubt. The offence alleged against him is not proved beyond reasonable doubt.
9. In the result, the revision is allowed. The impugned judgment of conviction and sentence is set aside. The Applicant is acquitted of the charge framed against him.
10. Records of the Courts below be sent back along with a copy of this order for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge