

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 144 of 2009**

State of Chhattisgarh, through Special Police Establishment,
Lokayukt Office, Bilaspur (C.G.)

---- Appellant

Versus

1. Safdar Ali, aged about 63 years, S/o Mohammad Ali, Retired Clerk, R/o Mominpara, Raipur (C.G.)
2. Avinash Chandra Sondhi, aged about 57 years, S/o J. Rai Sondhi, Executive Engineer, R/o Rewa (M.P.)
3. Kaushal Prasad Mishra, aged about 52 years, S/o Dev Narayan Mishra, Sub-Engineer, Water Resources Department, Pendra Road, District- Bilaspur (C.G.)

---- Respondents

For State/ Appellant : Mr. Vivek Sharma, G.A.

For Respondents : Mr. Ritesh Verma, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board**

13/11/2018

1. This acquittal appeal is preferred under Section 378 (3) of the Code of Criminal Procedure, 1973 against judgment dated 08.04.2002 passed by First Additional Sessions Judge and Special Judge, Bilaspur (C.G.) in Special Case No. 14/1995, wherein the said court acquitted all the respondents for commission of offence under Sections 409, 467, 468, 471 read with Sections 34 & 120 (B) of IPC, 1860 and Section 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988.
2. As per the prosecution case, all the three respondents were public servant working in Water Resources Department, Government of M.P. between year 1977 to 1979 and it is

alleged that they committed breach of trust of 393 bags of cement allotted for construction of Khudri canal. It is also case of the prosecution that the respondents made forged entry in the record of the department and thereby, committed financial loss to the said department.

3. First question for consideration is whether any of the respondent was trusted with bags of cement as alleged by the prosecution. To substantiate the charge, the prosecution examined as many as 17 witnesses, but no one deposed regarding trustment of cement bags to any of the respondent. Cement bags were obtained from certain agency and it was stored in the place constructed for this purpose by the department. No register was proved before the trial court to establish that the cement bags were collected in a store and it was trusted to any of the respondent. Again, there is no evidence that any of the respondent has withdrawn bags of cement from the said store.
4. It is alleged that the respondents have compromise quality by using ratio of less cement. Haribandhu Vishal (PW-3) deposed that the samples were collected from the site of canal and was sealed by officers of Lokayukt, but no one examined before the trial court to establish that the samples which were taken from the site of canal were sealed on the spot and it was kept in safe custody till sending the same to the expert for examination. G.K. Tiwari (PW-13) deposed that the officers of technical department collected the samples from the place of

construction, but no one examined before the trial court to establish that the samples which were collected, were kept in safe custody after sealing the same.

5. Dr. G.S. Pandey (PW-17), who was Lecturer of chemistry in Government Engineering College, Raipur, deposed that one A.N. Jha examined the samples of cement, but the said A.N. Jha was not examined before the trial court. In absence of opinion of expert who examined the sample seized in the case, it is not established that less quantity of cement was mixed during construction and thereby, the department has sustained financial loss.
6. Looking to the entire evidence, the trial court opined that charges of breach of trust and forgery and again, charge of misconduct on the part of respondents are not established in absence of connecting piece of evidence and clinching evidence. After reassessing the entire record, this Court has no reason to substitute contrary finding and this Court has no reason to disturb the finding recorded by the trial court.
7. Accordingly, the acquittal appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge