

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 81 of 2006

Order reserved on 24.09.2018

Order pronounced on 10.12.2018

Khemlal Rathore S/o. Tilakram Rathore aged about 57 years, Occupation Labour R/o. Village Sapiya, P.S. Dabhra, District Janjgir-Champa, CG.

---- Applicant

Versus

State of Chhattisgarh, through the District Magistrate Raigarh, Chhattisgarh.

---- Respondent

For Applicant : Shri R.K. Pali, Advocate

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 25.01.2006 passed by Additional Sessions Judge, Raigarh, (CG) in Criminal Appeal No. 50/2004 affirming the judgment dated 23.02.2004 passed by Judicial Magistrate First Class Dharamjaygarh in Criminal Case No. 676/1994 convicting the accused/applicant u/s 409 IPC and sentencing him to undergo RI for two years with fine of Rs. 5,000/-, in default of payment of fine to further undergo RI for six months.

2. Facts of the case, in brief, are that being the in-charge manager of Tribal welfare co-operative society, Branch Chhal during the period 24.10.1988 to 10.05.1991 the applicant dishonestly committed a criminal breach of trust by

misappropriating the amount of Rs. 1,69,021.17 and converted the same for his own use. This he did in the capacity of public servant by making false entry in the documents including the ledger register which were to be maintained by him only. After report being lodged by Nripraj Vishwas (PW-1) on the basis of which an offence under Section 409 read with 420 IPC was registered against the accused/applicant. The trial Court however, framed the charge under Section 409 IPC only.

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 only. According to him, as the incident had taken place in the year 1994, and that he has already remained in jail for a period of 03 months 15 days and that by now the accused/applicant is aged about 78 years, 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 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 documents of Ex. P-3, P-4, P-5, P-6 and P-7 regarding seizure of various documents showing the false entries made by the accused/applicant and taking into consideration the evidence of the witnesses it is apparent that the accused/applicant being in-charge manager of Tribal welfare co-operative society, Branch Chhal committed a criminal breach of trust and thereby dishonestly misappropriated an amount of Rs. 1,32,473.67 by making a false entry in the documents in his possession and converted the same for his own use. PW-8 who has proved the audit report Ex. P-11 has also stated that the accused/applicant without obtaining the approval of the competent authority had made false entries in the documents in his possession in regard to various amounts. Though, the amount misappropriated, according to learned Magistrate, was 1,69,021.17 but the lower Appellate Court did not find any misappropriation of Rs. 36,547.50 on the head of Saal seed but it has definitely found the total amount being dishonestly misappropriated at Rs. 1,32,473.67. The finding recorded by learned lower appellate court is based on the evidence of the witnesses examined by the prosecution. No illegality is apparent in the same. Conviction of the accused/applicant under Section 409 IPC is thus maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place about 24 years back, that by now the applicant is in his late seventies and he has already remained in jail for a period of 03 months 15 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. It is made clear that the find sentence as imposed by the Courts below has not been touched by this Court and therefore, it has to be deposited if not already done so.

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