

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1011 of 2018

- Phool Singh S/o Kejuram Aged About 64 Years R/o Aamdi, P. S. Arjuni Tahsil And District Dhamtari Chhattisgarh,

---- Applicant

Versus

1. Purshottam Sahu S/o Budhram Sahu Aged About 58 Years R/o Aamdi, P. S. Arjuni District Dhamtari Chhattisgarh,
2. Ramsewak @ Sewak S/o Deerbiram Sahu Aged About 39 Years R/o Aamdi, P. S. Arjuni District Dhamtari Chhattisgarh,
3. Dugeshwar S/o Purshottam Sahu Aged About 20 Years R/o Aamdi, P. S. Arjuni District Dhamtari Chhattisgarh,
4. Yadram Sahu S/o Late Paltan Ram Sahu Aged About 48 Years R/o Aamdi, P. S. Arjuni District Dhamtari Chhattisgarh,
5. State Of Chhattisgarh Through Aarakshi Kendra Arjuni District Dhamtari Chhattisgarh

---- Respondents

For Applicant	: Shri Arvind Dubey, Advocate
For Respondents 1 to 4	: Shri Sumit Shrivastava, Advocate
For Respondent No.5/State	: Shri Wasim Miyan, PL

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Smt. Justice Rajani Dubey

Order On Board By Prashant Kumar Mishra, J

10/12/2018

This criminal revision has been preferred by the informant challenging the appellate order dated 5.11.2015 whereby the Additional Sessions Judge, Dhamtari has dismissed his appeal which in turn was preferred against the judgment of acquittal rendered by the Chief Judicial Magistrate, Dhamtari on 26.10.2013 acquitting the respondents of the charges under Sections 420/34,467/34 and 471/34 IPC.

2. The criminal revision is barred by 935 days. The applicant had earlier preferred successive application for leave to appeal bearing Cr.M.P. Nos.

437/2017, 5/2018 and 1311/2018 therefore, a considerable time has elapsed on account of bonafidely litigating in another jurisdiction of this court and as such a case for condoning the delay has been made out. We accordingly, condone the delay of 935 days in filing the revision application.

3. Heard counsel for the applicant on admission.

4. Prosecution case in short is that one Gayitri Bai was the elder mother (*Badi maa*) of informant Phool Singh. The co-opartive Bank Branch Amdi was to make payment of Rs. 72,225/- to Gayitri Bai towards consideration for sale of paddy by Gayitri Bai to the Primary Credit Cooperative Society. On 01.01.2003, the Bank was distributing cheques to the beneficiaries. Accused Purushottam had gone to receive the cheque prepared in the name of Gayitri Bai but the bank officials/employees refused to handover the cheque and insisted that the person in whose name cheque is prepared is required to attend the branch. On persuasion by Purushottam, the accused Ram Sewak, Dugeshwar and Yadram went to the house of Gayitri Bai and obtained her thumb impression on the receipt even though according to the informant, Gayitri Bai was already dead at that time. The FIR thus alleged that accused Purushottam and other accused who are Bank employees had shared common intention to defraud him or Gayitri Bai and concocted valuable security for releasing payment in the name of Gayitri Bai even though she was not alive on the date of incident.

5. Both the courts below have found that it is not proved by adducing cogent and reliable evidence that at the time when thumb impression of Gayitri Bai was taken on the register in proof of receiving the cheque, she was already dead.

6. Similarly, the trial court has observed in para 32 of the judgment that subsequent to the death of Gayitri Bai, the application for grant of succession certificate was moved by one Chandrika Bai which has been allowed and payment of the amount has been made to said Chandrika Bai.

Thus, in any case informant Phool Singh was not legally competent to receive the amount of Rs. 72,225/- even after death of Gayitri Bai. The only object of preferring the complaint was that if the cheque would not have been released in favour of Gayitri Bai, the same might have been released in favour of Phool Singh's mother, eventually benefitting Phool Singh, but once the jurisdictional succession court has allowed the succession case in favour of Chandrika Bai, Phool Singh no longer appears to be aggrieved party in relation to the cheque amount.

7. In the above view of the matter, the courts below have rightly concluded that no fraud or cheating or concoction of document has been made by the complainant Phool Singh. It is settled law that court exercising revisional jurisdiction is not competent to set aside the concurrent findings of fact arrived at. It is also settled that when two views are possible and the trial court has taken one plausible view for acquitting the accused, while entertaining the appeal or revision against acquittal, the higher court will not substitute its own view to convict the accused. After perusal of the entire record, we do not find any such evidence of clinching nature which would render the findings recorded by the courts below holding perverse or contrary to the record.

8. It is not a case where only one view was possible in favour of the informant and the trial court has failed to take that view. It is a case where two views were possible and the court has taken one view in the matter for acquitting the accused therefore no case for interference is made out. Accordingly, the revision application is dismissed at this stage.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge