

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 447 of 2008**

1. Union of India, Through C.G. GEO Spatial Data Centre, Survey of India, Pachpedi Naka, Raipur (C.G.)
2. The Director, C.G. GEO- Spatial Data Centre, Survey of India, Pachpedi Naka, Raipur (C.G.)

---- Applicants**Versus**

1. Jawaharlal Sahu, aged about 65 years, S/o Motilal Sahu, R/o 1207, Dayanagar, Jabalpur (M.P.)
2. State of C.G.

---- Respondents

For Applicants	:	None present.
For Respondent No.-1	:	None present.
For Respondent No.-2/State	:	Mr. Ajay Mishra, PL

Hon'ble Smt. Justice Rajani Dubey**Order on Board****12.09.2019**

1. The applicant/complainant has preferred this revision against the order dated 29.08.2006, passed by the Judicial Magistrate First Class Raipur (C.G.) in Criminal Case No. 1166/2006 whereby the learned Judicial Magistrate First Class acquitted the respondent No.-1 from the offence under Sections 409 of the IPC.

2. Brief facts of the case are that, the Survey of India is a department of the Government of India. The respondent, being an employee of the Survey of India, was transferred in 1991 from Jabalpur office of Survey of India to the office of the Survey of India, Idgah Bhata, Raipur in the post of store keeper. The entire store of the office was in the dominion and custody of the store keeper, the respondent. Every year, as per rules, the store was physically verified. The accused was asked 2 to 3 times to get the store physically verified but he did not pay any heed. Therefore, a Verification Board was constituted by the Jabalpur office for the purpose in the year 1996 but, the accused did not cooperate, so,

the Board drew blank and could not undertake verification. After some time, a new Board was constituted in which the respondent himself was a member and he was directed to extend full co-operation in the task of verification by making available the requisite records. The physical verification was undertaken in the presence of the respondent in 1997. The members of the board, after verification, prepared a report of shortage of the government property in the store under the custody and dominion of the respondent and, on verification of the record, there was found shortage of 96 items of Government property valued at Rs. 1,57,330/-. The FIR was lodged by the Superintendent at the police station Civil Lines, Raipur against the respondent. The relevant documents were seized by the police from the respondent and after completion of investigation charge-sheet was filed by the police on 04.02.1999 in the trial Court and charge was framed under Section 409 of the IPC against respondent.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, the learned trial court by impugned order and judgment dated 29.08.2006, acquitted the accused/respondent No.-1 from the charge under Section 409 of the IPC. Hence, this revision.

5. The revision has been filed on the ground that the legal evidence, oral and documentary, as adduced by the prosecution, was erroneously ignored and misconstrued by the Court below. In the light of the evidence brought on record the learned trial Court should have held that the act of failure of the accused to rebut the evidence of the shortage of the Government property worth of Rs. 1,57,330/- had proved the guilt under Section 409 of the IPC against him. Prosecution witness says that respondent did not cooperate initially with the verification team. The verification report bearing the signature of the accused proves commission of the offence by him. The FIR is Ex. P-2 which is based on the written

complaint of PW-2. Ex. P-3 and Ex. P-4 is the list of the documents and Ex. P-5 is the list of the items found short in the verification and these all documents proved the guilt of the respondent. The verification report establishes the fact of physical verification and also loss of the government property while under the dominion of a public servant. It is an admitted document since it carries the said public servant's signature. So, there is no need of further proof of criminal breach of trust. In the light of the evidence and circumstances of the case, no further evidence was required to prove the guilt of respondent. On 31.01.2003, the respondent retired and his expansionary benefit, DCRG, is also withheld. He had committed the same offence at Jabalpur also as regards government property under his dominion. PW-1 & PW-2 have proved in their deposition that the board had undertaken physical verification of the articles that were found short in the records. The Court below erred in law in rejecting application of the prosecution moved under Section 311 Cr.P.C. for further evidence. The prosecution was instituted for the Union of India in the interest of the Public exchequer. The judgment of acquittal is full of inconsistencies, as such the same is liable to be set aside.

6. None appear on behalf of respondent Nos 1.
7. Learned counsel for the State has supported the impugned order.
8. Perused the material on record including the impugned order.
9. The learned trial Court, after appreciating the oral and documentary evidence, acquitted the respondent of the charge filed under Section 409 of the IPC on the ground that, prosecution has failed to prove its case beyond reasonable doubt.
10. Hon'ble Supreme Court in **Vimal Singh v. Khuman Singh** reported in **(AIR 1998 Supreme Court 3380)** held as under:-

“Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless

there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-Section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court could not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High court in such exceptional cases is to order retrial. In fact, sub-Section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction.”

11. The learned Trial Court, in its judgment, discussed the statements of all the witnesses. The trial Court did not shut down or discard the evidence laid by the prosecution outrightly, on the contrary, the trial Court assessed the entire evidence on record and then came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and acquitted the

accused/respondent. In the light of Apex Court's decision Viman Singh (Supra), High Court can interfere with the order of acquittal if it comes within the ambit of exceptional case such as same suffering from glaring illegality etc.

12. Considering this aspect of the case and further considering other evidence available on record, the trial court has come to the conclusion of acquitting the accused/respondent of the charges levelled against him by extending him benefit of doubt. This Court finds no illegality in the order impugned acquitting the respondent particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of revision against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

13. Accordingly, the revision preferred by the complainant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE