

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 634 of 2001**

1. State of Chhattisgarh, Through Station House Officer, Police Station Bhatapara City, District Raipur (C.G.).

---- Appellant**Versus**

1. Lokesh, aged about 24 years, S/o Devi Prasad Sharma, R/o Bhatapara, District Raipur (C.G.)

---- Respondent

For Appellant/State	:	Smt. Madhunisha Singh, Panel Lawyer.
For Respondent	:	Shri Ram Kumar Tiwari, Advocate

Hon'ble Justice Shri Gautam Chourdiya**08/08/2019****Judgment On Board**

- 1) By this appeal under Section 378(3) read with section 378 (1) of Code of Criminal Procedure, 1973 the State/appellant has called in question the legality and validity of the judgment dated 22/02/2001 passed by Judicial Magistrate First Class, Baloda Bazar, District Raipur (C.G.) in Criminal Case No. 904/93 whereby the respondent/accused has been acquitted of the charge under section 409 of Indian Penal Code, 1860 ("in short "IPC").
- 2) Case of the prosecution in brief is that on the date of incident i.e. on 09/05/1993 one Rikshaw Puller, Nirmal Kumar Vishwakarma was carrying some medicine in his Rakshaw. As per Ex. P-1 the said medicines were seized from Nirmal Kumar Vishwakarma (PW-01). F.I.R. (Ex. P-5) was lodged by Dr. Prakash Joshi (PW-03) that medicines seized from Rikshaw Puller Nirmal Kumar belong to the Community Health Centre, Government Hospital, Bhatapara. As per Ex. P-5 offence was registered against the compounder of the Hospital i.e. respondent/accused. During

investigation, as per Seizure Memo Ex. P-2 certain vouchers issued by the office of Chief Medical Officer Bhatapara to the respondent/accused were seized. After investigation, charge sheet was filed against the respondent/accused under section 409 of IPC for commission of criminal breach of trust in respect of the property that medicines entrusted to him for his personal gains. The Trial Court framed charge under section 409 of IPC against the respondent/accused to which he denied the charge pleaded innocence and prayed for trial.

- 3) In order to prove its case, the prosecution examined total four witnesses. Statement of the accused was recorded under section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence he examined one Shiv Kumar Patel as DW-01.
- 4) The Trial Court after considering the material available on record by the impugned judgment acquitted the respondent/accused of the charge under section 409 of IPC.
- 5) Learned counsel for the State/appellant submits that the Trial Court without proper appreciation of the evidence available on record has recorded the finding of acquittal merely on the basis of the conjectures and surmises and as such the same is liable to be set aside and the respondent has to be convicted under section 409 of IPC.
- 6) On the other hand learned counsel for the respondent/accused supporting the impugned judgment and submits that the learned Trial Court considering all the relevant aspects of the matter and upon due appreciation of the overall evidence has rightly acquitted the respondent/accused of the charge under section 409 of IPC, which calls for no interference by this Court.
- 7) Heard counsel for the parties and perused the material available on record.

- 8) It is not disputed by both the parties on date 09/05/1993 respondent/accused was working as a Compounder in Government Hospital Bhatapara and as per PW-03 Dr. Prakash Joshi, the accused is Store-in-charge of medicine kept in the Government Hospital, Bhatapara. PW-03 also stated this fact one Rikshaw Puller was carrying some medicines in his Rikshaw, he followed the said Rikshaw and found that the said medicines belong to Government Hospital and therefore, he informed the Police and lodged FIR Ex. P-5.
- 9) In this case, PW-03 Dr. Prakash Joshi has not proved that the medicines seized by the Police belong to the Govt. Hospital Bhatapara. PW-01 Nirmal Kumar Vishwakarma, the Rikshaw Puller, from whom the medicines were seized as per Ex. P-1 has not supported the prosecution case. PW-02 Dr. Dwarika Prasad Verma has also not supported the prosecution case. Thus, in this case, all the important prosecution witnesses have not supported the prosecution case and even there is no verification report from the concerned Govt. Hospital to establish that the medicines seized by the Police as per Ex. P-1 belong to the said Hospital. There is also no evidence adduced by the prosecution that PW-01 Nirmal Kumar Vishwakarma was carrying the medicines at the instance of the respondent which was entrusted to him by the Hospital authorities.
- 10) It is not disputed by the parties that the respondent/accused was a public servant at the relevant time. In order to attract the offence under section 409 of IPC the prosecution is required to prove beyond reasonable doubt that the property in question was entrusted to the accused, the accused had dominion over such property and he committed breach of trust in respect of that property. However, in the present case, as discussed above, none of the prosecution witnesses has supported the prosecution case and also there is no verification report from concerned Hospital which could prove that the respondent/accused was entrusted that the medicines seized by the Police as per Ex. P-1 and that he in any manner committed breach of

trust by handing over the said medicines to PW-01 Nirmal Kumar Vishwakarma for his personal gains. In these circumstances, the prosecution has utterly failed to prove guilt of the respondent/accused as required under law and as such the Trial Court has not committed any illegality or perversity in acquitting respondent /accused of the said charge.

- 11) In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

**-Sd/-
(Gautam Chourdiya)
Judge**

Chandrakant