

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 603 of 2003

Kyamal Singh S/o. Manrakhan Singh, Aged about 40 years,
Resident of village Latabod, Tahsil Balod, District Durg (C.G.)

Versus

State of Chhattisgarh

For the Applicant : Mr. Samir Singh, Advocate

For the Respondent : Mr. I.Lakra, Dy. Govt. Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

28.01.2019

1. This is revision against the judgment dated 11.11.2003, passed by the learned Additional Sessions Judge, Balod modifying the judgment of conviction and order of sentence dated 30.07.2001, passed by the learned Judicial Magistrate First Class, Balod, vide which the applicant was held guilt under Section 409 IPC and was sentenced to undergo rigorous imprisonment for two years and fine of Rs. 4,000/-, in default thereof, to undergo further rigorous imprisonment for nine months.

2. Facts of the case, in brief, are that the applicant was posted as sub postmaster of post office Balod Town. He was having

different charge of works of post office, in addition to his own charge. The applicant opened 18 saving accounts through the agent and received money from them and made entry in the pass book but not deposited the same in the post office. On 18.05.1993, an inspection was done by Sub Divisional Inspector William Tirkey (PW-1) in the post office and it was found that the applicant was not coming to his duty for last 6 -7 days. He informed his superior official about the irregularities of the applicant and inspected the post office. After inspection it was found that the applicant committing criminal breach of trust by misappropriating total sum of Rs. 33,119.95 which was entrusted to him by the account holders. Thus, Sub Divisional Inspector William Tirkey (PW-1) after obtaining permission for prosecuting the applicant, he lodged the FIR (Ex.P-3) in Police Station Balod and after completion of investigation, charge-sheet was filed against him.

3. Having taken into consideration the material on record, the trial Court convicted the accused/applicant under Sections 409 IPC and sentenced him to undergo RI for 3 years and to pay fine of Rs. 4000. On appeal, learned lower appellate Court has modified the sentence part only and sentenced him to undergo RI for 2 years to that of RI for 3 years. Hence, this revision.

4. Learned counsel for the applicant submits that the order impugned being contrary to the evidence on record is liable to be set aside. He further submits that the Courts below have not seen

the evidence on record in its proper perspective and have also taken an erroneous view by ignoring the fact that the ingredients of section 409 IPC are not attracted to the case of the prosecution. Counsel for the respondent/ State however, supports the same.

5. Heard the State counsel and perused the evidence on record.

6. From the evidence of witnesses (PW-1), (PW-2), (PW-3), (PW-5), (PW-7), (PW-9)(PW-10) (PW-11) & (PW-16), it is clear that being a public servant the accused/applicant committed criminal breach of trust by dishonestly misappropriating the government money of Rs. 33,119.95. It is true that the accounts holders have deposited the different amounts in the post office through the agent and the applicant had even made entry in their pass books but had not deposited the same money in their respective accounts. More so, there is evidence on record to prove the fact that payment of Rs. 33,119.95 was found short in the post office where the applicant posted as sub Postmaster. All this shows that the applicant was involved in commission of the offence alleged against him. J.S. Madhavi (PW-10) - the investigating officer has also supported the case of the prosecution in its entirety and nothing has been brought forth by the defence to rebut the evidence collected by the prosecution. In overall view of the matter, conviction of the accused/applicant under Sections 409 IPC being based on the evidence collected by the prosecution does not suffer from any illegality or infirmity and it is maintained accordingly.

- 7.** As far as the sentence part of the judgment impugned is concerned, looking to the fact that the incident had taken place 26 years ago and the applicant has already suffered the jail sentence of about 11 months and deposited fine amount of Rs. 4,000/-, in my opinion, no useful purpose is going to be served in again sending him to jail. Accordingly, his sentence is reduced to the period already undergone by him.
- 8.** With the above, the revision stands allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE