

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 688 of 2010

Kaushik Das Manikpuri

Applicant

Versus

State Of Chhattisgarh

Respondent

Post for pronouncement of the judgment on 03.05.2019

JUDGE
Sd/-

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 27.02.2019****Judgment delivered on : 03.05.2019****CRR No. 688 of 2010**

- Kaushik Das Manikpuri S/o Sukhidas, R/o Bhagwat Chowk, Kashi Nagar, Korba, Tahsil And Distt.-Korba, C.G.

---- Applicant**Versus**

- State Of Chhattisgarh

---- Respondent

For Applicant	: Shri Arvind Shrivastava, Advocate
For Respondent/State	: Shri K.K.Singh, GA

Hon'ble Smt. Justice Rajani Dubey**C A V Order****03.05.2019**

The present revision arises out of the impugned order and judgment dated 23.11.2010 passed by the Sessions Judge, Korba in Cr. Appeal No. 25/2008 whereby the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Korba, vide its judgment dated 15.10.2008 in Cr. Case No. 970/2007 for the offence under Sections 420, 467 and 468 IPC and sentenced him to undergo RI for 18 months and fine of Rs. 2,000/- u/s. 420; to undergo

RI for three years and fine of Rs. 1,000/- u/s. 467 and to undergo RI for 18 months and fine of Rs. 2,000/- u/s. 468, plus default stipulations.

2. Brief facts of the case are that at the time of incident, applicant was posted at Government College, Bhaisma as Assistant Grade-III. Prior to 14.06.2007, applicant illegally withdrew the GPF amount from the accounts of one R.L.Bharadwaj and Ramadin (both Class IV employees) without their permission by forged signature of the Principal Rajesh Saxena. It is alleged that Rs. 49,000/- was withdrawn from the GPF Account of Shri R.L.Bharadwaj whereas Rs. 38,000/- from the account of Shri Ramadin. When complainant Rajesh Saxena came to know about the incident, he recovered the same i.e. Rs. 21,000/- in cash from the applicant and also seized two months salary and other miscellaneous sum amounting to Rs. 87,000/- through challan into the treasury. Thereafter, complainant Rajesh Saxena gave a written complaint at police station on which offence under Sections 420,467 and 468 IPC were registered. Investigation was done and after completion of investigation, charge sheet was filed, charges were framed against the applicant under Section 420,467 and 468 IPC.

3. In order to prove the guilt of the accused/applicant, the prosecution has examined 12 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 his innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment and order dated 15.10.08, learned Magistrate has convicted the accused/applicant for the offence under Sections 420, 467 and 468 IPC and sentenced him as mentioned above. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence of the applicant. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that the judgment passed by both the courts below is contrary to law, facts and circumstances of the case. Learned lower courts have erred in traveling beyond the jurisdiction of procedure of law. From perusal of the impugned order, which clearly shows that the trial court has passed its whole finding upon unfounded grounds whose veracity was not corroborated.

7. Learned Sessions Judge failed to rely with the case that in the related offence, the report of the handwriting expert was essential which, in the present case was missing. The testimony of Rajesh Saxena (PW-2) and Ramesh Kumar (PW-10) clearly shows the

innocence of the applicant. The forgery cannot be even established by the learned trial court and hence convicting the appellant on such weak premise would frustrate the very principles of criminal prosecution. The learned courts below have erred in neglecting the substantial unexplained delay in lodging the FIR by the informant. Seizure of the challan forms and the BTR Register was made from the applicant and the treasury officers and the employees who were posted at the counter at the relevant period have not been examined nor made witness to the case. The original bill in dispute was not seized by the investigating officer therefore the impugned order passed by the learned sessions court is improper incorrect and contrary to the established judicial precedence and legal principles.

8. On the other hand, supporting the impugned judgment, it has been argued by the State that the conviction of the applicant/accused is strictly in accordance with law and there is no infirmity in the same.

9. Heard counsel for the parties and perused the material available on record.

10. Complainant Rajesh Kumar Saxena PW-2) has stated that he was posted as In charge, Principal from 13.12.2006 to 28.07.2007 at Government College, Korba and during that period, he was also the In charge of Govt. College Bhaisma and during his tenure he was also having the power of withdrawal and disbursement Officer and applicant was looking after the work of Accounts. He has stated that when the employees R. L. Bharadwaj and Ramadhin informed to

Mahesh Pandey, Incharge, Principal at Government College, Bhaisma about withdrawal of money from their GPF account by using forged signatures of the complainant Rajesh Saxena, the applicant was called, search was made and from his possession, cash of Rs. 21,000/-, two months salary and six months advance amount was seized and deposited in the treasury. He has stated that thereafter written complaint was given at police station. Mahesh Pandey (PW-2) has stated that when the salary was not withdrawn, he received information from the Treasury, Korba on 13.06.07 that applicant was given one cheque for withdrawal of amount of Rs. 87,000/-. He has stated that when he asked Rajesh Saxena about the same, he was also not aware of any withdrawal and thereafter came to know from the Treasury, Korba that two bills were produced and the cheque dated 13.06.07 was issued.

11. Mahesh Pandey (PW-2) has stated that he knew the applicant who was posted at Govt. College Bhaisma. On 15.02.06, he was posted as Assistant Profesor of Sociology. At the relevant time, complainant was the Accounts In charge at Govt. College, Bhaisma. He has stated that he come to know that the applicant has misappropriated sum of Rs. 87,000/- from the GPF account of two Class IV employees and the same was not deposited in their accounts. Vijay Agrawal (PW-3) has stated that complainant Rajesh Saxena had informed him that the applicant had withdrawn some amount from GPF account of the two employees. Vijay Agrawal PW-3 has stated that he came to know from the complainant Rajesh

Saxena that the applicant had withdrawn the amount from GPF account of two employees by making his forged signatures.

12. Learned counsel for the applicant submits that the Sessions Court has no power to examine the handwriting of the applicant under Section 73 of the Evidence Act when the trial court did not base its finding on this fact and the court also can not take into consideration.

13. It has been relied upon one of the decision of the Apex Court in the matter of ***Fakhruddin Vs. The State of Madhya Pradesh***, reported in ***AIR 1967 SC 1326***, wherein the following has been held regarding Section 73 of the Evidence Act:

10. Evidence of the identity of handwriting receives treatment in three Sections of the Indian Evidence Act. They are Sections 45, 47 and 73. Handwriting may be proved on admission of the writer, by the evidence of some witness in whose presence he wrote. There is direct evidence and if it is available the evidence of any other kind is rendered unnecessary. The Evidence Act also makes relevant the opinion of a handwriting expert (S.45) or of one who is familiar with the writing of a person who is said to have written a particular writing. Thus besides direct evidence which is of course the best method of proof, the law makes relevant two other modes. A writing may be proved to be in the handwriting of a person who is said to have written a particular writing. Thus, besides direct evidence which is of course the best method of proof, the lawyer makes relevant two other modes. A writing may be proved to be in the handwriting of a particular individual by the evidence of a person familiar with the handwriting of that individual or by the testimony of an expert competent to the comparison of handwritings on a scientific basis. A third method (S.73) is comparison by the Court with a writing made in the presence of the Court or admitted or proved to be the writing of

the person.

11. Both under S.45 and S.47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as a re-open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness.

In the light of above, the Session court cannot be held wrong in comparing the handwritings.

14. Unauthorized withdrawal of money has been proven by the prosecution. The accused has also not offered any explanation as to how the money was withdrawn while he was in charge of the accounts. It is thus clear from the evidence of witnesses that the accounts work was done by the applicant only. In the cross-examination of the witnesses, all of them remained firm and no

material contradiction came out. Even though there is no handwriting experts report but still it is proved from oral and documentary evidence that money was withdrawn by the appellant. The overall evidence establishes the involvement of the accused/applicant in the crime in question. This Court does not see any illegality in the findings recorded by the court below as regards conviction of the applicant under Sections 420, 467 and 468 IPC. Considering the gravity of offence, the awarded sentence is just and proper. Accordingly, the revision is dismissed. Conviction and sentence of the applicant stands maintained.

Sd/-
(Rajani Dibey)
Judge