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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 28/06/2019

Judgment Delivered on : 09/08/2019

Criminal Revision No. 347 of 2004

Arun Kumar Baretwar S/o Late Ganpatrao Baretwar Aged About 50 Years R/o Shukrawari Ward, Police Station Gudhiyari, Raipur Chhattisgarh.

---- Applicant

Versus

Government Of India through CBI Jabalpur Through Central Bureau Of Investigation Jabalpur M.P.

---- Respondent

For the Applicant	:	None.
For the Respondent	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

Heard.

(1) This revision has been brought challenging the judgment dated 16.6.2004 passed by the Court of Special Judge, CBI, Raipur in Special Criminal Appeal No. 83 of 2004 upholding the judgment of conviction and sentence passed by the Court of Special Judicial Magistrate, Central Bureau of Investigation, Raipur in Special Criminal Case No. 17 of 2001 convicting the appellant for the offences under Sections 420 and 468 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 3 years and to pay fine of Rs.20,000/-, in default of payment of fine, to further undergo RI for 1 year for each of the offence he was convicted.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the applicant as aforementioned and thereby committed illegality.

(3) The case of the prosecution, in brief, is that the applicant was posted and working as typist in the office of the Oriental Insurance Company Limited, Raipur. The applicant opened a fake savings account in Dena Bank, Jawahar Nagar Branch, Raipur in the name of firm M/s. Vimal Engineering Works, Raipur and forged the signature of Vimal Kumar Jain in the process of opening that account. The applicant then processed the loan papers for Rajendra Kumar (PW-6) in which a quotation was submitted from the said fake M/s Vimal Engineering Works, Raipur. Dena Bank sanctioned a loan of Rs.24,000/- in favour of Rajendra Kumar (PW-6) and demand draft No.3200199 for the purchase of boring machine was issued in the name of firm M/s Vimal Engineering Works for payment against supply of boring machine. The amount so received in the account of M/s Vimal Engineering Works was withdrawn by the applicant by a cheque No.780751 dated 7.3.1983, by making use of forged signature of Vimal Kumar Jain. When the fraud committed by the applicant was disclosed, FIR was lodged, the case was investigated by the respondent and the charge-sheet was filed against the applicant.

(4) The applicant was tried and convicted by the trial Court i.e. the Court of Special Judicial Magistrate, CBI, Raipur. This judgment of conviction and sentence was challenged in the appeal before the Special Judge, CBI Court, Raipur in Criminal Appeal No. 83 of 2004. Learned

Special Judge after considering on all the grounds in the appeal has dismissed the appeal and upheld the conviction and sentence passed against the applicant in the judgment impugned.

(5) The grounds raised in this revision are that the judgments of both the Courts below are arbitrary, illegal and contrary to the law. The conviction against the applicant is based on just surmises and conjectures, and the conviction is without proper appreciation of the evidence produced by the prosecution. The FIR itself disclosed that Rajendra Kumar (PW-6) was fictitious person even then the statement of Rajendra Kumar (PW-6) has been relied upon, therefore, there were grounds available to conclude that it was Rajendra Kumar (PW-6) who had made the withdrawal. Apart from that, Kuleshwar Prasad Verma (PW-1) is the person who made the withdrawal and the applicant can be held responsible for the said withdrawal and the prosecution has failed to prove its case beyond reasonable doubt. Therefore, the applicant was entitled for acquittal.

(6) The powers of revision under Section 397 read with Section 401 of the Cr.P.C. are limited to make an enquiry as to the legality, propriety and correctness of the order passed by the Court below. The findings of both the Courts below are based on evidence. The loan in this case was sanctioned in the name of Rajendra Kumar (PW-6) by the then Manager of Dena Bank. Ravindra Ramakant (PW-7) has given a statement before the Court that a loan application was processed by the branch in which the witness was posted and a loan was sanctioned for purchase of

machinery in favour of the said application. He has stated that as the machinery was to be purchased from M/s. Vimal Engineering Works, a demand draft was issued for making payment in favour of M/s. Vimal Engineering Works, Raipur. He has further stated that he made an enquiry regarding M/s. Vimal Engineering Works and found that there was no such concern and he did not find any person who was operating the bank account of M/s. Vimal Engineering Works. His statement has remained unrebutted in cross-examination. Another witness from Dena Bank G.P. Singh, (PW-10) has stated that a proposal was received vide Ex. P/8 for sanction of loan in favour of Rajendra Kumar (PW-6) for an amount of Rs.32,000/- in the branch of Dena Bank. After examination of the said papers, a loan of Rs.24,000/- was sanctioned in favour of Rajendra Kumar (PW-6) in accordance with the terms and conditions of the agreement.

(7) L.N. Tiwari (PW-11) was the then Sales Tax Officer posted at Raipur. He has stated that on a query made by CBI he had replied vide Ex.P/22 that any firm named and styled as M/s. Vimal Engineering works, Main Road, was not registered in the Sales-Tax Department.

(8) Joseph Imnual (PW-12) is also an officer of Dena Bank, Raipur. He has stated that vide Ex. P/23 application was made for opening an account in the name of M/s. Vimal Engineering Works in which Vimal Kumar Jain was shown as the proprietor. The applicant in the said firm was introduced by Saifuddin (PW-3), Proprietor of Badri Printers. On this basis, the account was opened in favour of M/s. Vimal Engineering

Works. He has further stated that according to the statement of account of M/s. Vimal Engineering Works vide Ex. P/24 a credit of amount Rs.24,000/- was made, into the account, from the loan account of Rajendra Kumar (PW-6) on the basis of a draft issued for the same. Thereafter, the amount of Rs.24,000/- was withdrawn by the Proprietor of Vimal Engineering Works.

(9) Rajendra Kumar (PW-6) has stated that this applicant had induced that he will get the loan sanctioned in his favour and taken to a bank where he was made to sign some documents, thereafter, he does not have any knowledge whether a loan was sanctioned in his favour and he has stated that he does not know any Vimal Engineering Works and he has also not made any payment to the Proprietor of Vimal Engineering Works of Rs.8,000/-. He has further stated that his sample signatures were obtained by the officers of Central Bureau of Investigation.

(10) Other evidence that is evident against the applicant is given by Saifuddin (PW-3) who has stated that the applicant was the person who ordered him to print a bill book showing the name of Vimal Engineering Works and that bill book is vide Ex. P/3. He has also stated that on asking of the applicant he had become introducer for opening of an account in the name of Vimal Engineering Works in Dena Bank. He has stated that he did not see Vimal Kumar Jain and he did the introduction only on the request made by the applicant. His statement has remained unrebutted in his cross-examination.

(11) Kuleshwar Prasad Verma (PW-1) was posted as daily-wage employee in the Oriental Insurance Company Limited, Raipur. He has stated that on asking of the applicant he made the withdrawal of a cheque numbered as 780751 (Ex. P/1) and after obtaining the amount of Rs.24,000/- had handed over the money to the applicant. His statement has remained totally unrebutted and unchallenged in his cross-examination.

(12) Inspector, J.S. Rakra (PW-16) has investigated this case. He has stated that he obtained a sample handwriting and signatures of the applicant vide Ex. P/72 to P/79. Similarly, he obtained sample of handwriting and signature of Rajendra Kumar (PW-6) vide Exs. P/4 to P/7. He referred the disputed handwritings and signatures in the bank documents for examination by handwriting expert.

(13) Handwriting expert, H.M. Tuteja (PW-13) has stated that on receiving the documents containing sample handwritings and signatures and the documents containing disputed handwritings and signatures, he minutely examined the same and had given opinion vide Ex. P/35 that the person who wrote the sample handwriting marked as Exs.P/16 to P/25 and Exs.P/70 to P/79 was the same person who wrote the questioned documents marked as Q-10 and A-10/1 and his statement has also remained unrebutted in his cross-examination.

(14) On examining and scrutinizing the statement of the witnesses available in the record of the trial Court, it appears that the findings of the trial Court as well as the Appellate Court are based on relevant evidence, therefore, no fault can be found with the conclusion that has been drawn by both the Courts below. There is no illegality, impropriety or incorrectness in the order passed, therefore, this revision petition is without any substance which is dismissed accordingly.

(15) The applicant has been released on bail by the order of this Court dated 9.7.2004. He is directed to be taken in custody and send to jail to serve out the remaining part of the sentence imposed upon him in the impugned judgment.

(16) Accordingly, this revision petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

Nimmi