

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 330 of 2003

Gangaram Deharia S/o. Jhaduram Deharia, Aged about 56 years,
Resident of village Marid, P.S. Bhilai Bhatti, District Durg (C.G.)

Versus

State of Chhattisgarh through District Magistrate Durg (C.G.)

For the Applicant : Mr. Raghvendra Pradhan, Advocate

For the Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

11.02.2019

1. By the judgment under challenge passed on 18.06.2003 by Additional Sessions Judge (FTC) Bemetara, Durg in Criminal Appeal No. 58 of 1999, the findings recorded by the learned Additional Chief Judicial Magistrate, Bemetara have been affirmed.

2. Facts of the case, in brief, are that the applicant was working as clerk in the office of Additional Tahsildar, Bemetara, in the year 1979. On 29.09.1998 when he was posted as Nayab Nazir in the Tahsil office at Bemetara, he used to be busy in different government transactions. At that time, Patwari Nand Kumar has made a complaint before the SDO complaining that the salary of

the employee for March 1979 was not released by the applicant. Peon Bajrang Lal had also made a complaint that his GPF amount was also not released by the applicant. Therefore, the complaints were forwarded to Additional Tahsildar for inquiry and submit his report. After inquiry the then Additional Tahsildar submitted his inquiry report on 23.04.1997, stating that the applicant dishonestly misappropriated the government money amounting to Rs. 13090.55. Further, the allegation against the applicant is that from 22.09.1978 to 22.04.1979 when his was posted in the Tahsil office at Bemetara, he had misappropriated sum of Rs. 11162.66. The said misappropriation was noticed by the accountant Govind Keshave Talagaonkar under audit report Ex.P-172. Therefore, SDO sent inquiry report Ex.P-17 along with Ex.P-4 regarding lodging of FIR against the applicant. Acting upon this, FIR (Ex.P-3) came to be lodged by PW -2 in Police Station Bemetara. Subsequently, 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 1 years and to pay fine of Rs. 1000. On appeal, learned lower appellate Court has affirmed the same. 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-7), (PW-9), (PW-11), (PW-12) & (PW-16), it is clear that the accused/applicant committed criminal breach of trust being a public servant by dishonestly misappropriated the government money of Rs. 13090.55 and Rs. 11162.66 during the period from 22.09.1978 to 22.04.1979. Though, the applicant has stated that he has given Rs. 400/- and Rs. 8000/- to the then Tahsildar without receipt but there is no such evidence on the basis of which the version of the applicant is accepted. In addition to this, B.L. Ahirwar (PW-4) - 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

22 years ago and the applicant has already suffered the jail sentence of about 1 months 25 days and deposited fine amount of Rs. 1,000/-, 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

Jyotishi/Santosh