

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 89 of 1997

- C. R. Gwalani S/o Late Shri Karam Chand Gwalani Aged About 41 Years R/o Bhatapara District Raipur M. P. Now Chhattisgarh, Present Address C/o Saxena Sadan E/19, Tagore Nagar, Raipur M. P. Now Chhattisgarh,

---- Appellant

Versus

- State Of Chhattisgarh Through C. B. I. Raipur Chhattisgarh,

---- Respondent

CRA No. 86 of 1997

- C. R. Gwalani S/o Shri Late Karam Chand Gwalani Aged About 41 Years R/o Bhatapara District Raipur M. P. Now Chhattisgarh, Present Address C/o Saxena Sadan E/19, Tagore Nagar, Raipur M. P. Now Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through C. B. I. Raipur Chhattisgarh,

---- Respondent

CRA No. 90 of 1997

- C. R. Gwalani S/o Shri Late Karam Chand Gwalani Aged About 41 Years R/o Bhatapara District Raipur M. P. Now Chhattisgarh, Present Address C/o Saxena Sadan E/19, Tagore Nagar, Raipur M. P. Now Chhattisgarh,

---- Appellant

Versus

- State Of Chhattisgarh Through C. B. I. Raipur Chhattisgarh

---- Respondent

CRA No. 91 of 1997

- C. R. Gwalani S/o Shri Late Karam Chand Gwalani Aged About

41 Years R/o Bhatapara District Raipur M. P. Now Chhattisgarh,
Present Address C/o Saxena Sadan E/19, Tagore Nagar, Raipur
M. P. Now Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through C. B. I. Raipur Chhattisgarh

---- Respondent

CRA No. 92 of 1997

- C. R. Gwalani S/o Shri Late Karam Chand Gwalani Aged About
41 Years R/o Bhatapara District Raipur M. P. Now Chhattisgarh,
Present Address C/o Saxena Sadan E/19, Tagore Nagar, Raipur
M. P. Now Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through C. B. I. Raipur Chhattisgarh

---- Respondent

For Appellant	:	Shri B.L. Dembra, Advocate.
For Respondent/C.B.I.	:	Shri B. Gopa Kumar, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

22/08/2019

On the allegation that the appellant, who was a public servant working with Oriental Insurance Co. Ltd., Branch-Raipur (CG), was involved in commission of criminal breach of trust by misappropriation of the amount received from several persons/banks on different occasions, he was separately tried for each offence by V Additional Sessions Judge & Special Judge (C.B.I.), Jabalpur (M.P.) vide judgments dated 8.1.1997. Details of the same are as under:

Sl. No.	Special Case No.	Date of occurrence & amount misappropriated	Conviction under Section	Sentence
01.	16/93	7.1.87 to 20.11.87; Rs.5,425/-	409 of IPC 13(1)(c)/13(2) of Prevention of Corruption Act, 1988	2 years RI, fine of Rs.7000/-; 2 years RI, fine of Rs.5000/-; In default of fine amounts, additional RI for six months on each count.
02.	17/93	23.11.84 to 22.6.85; Rs.3,302/-	409 of IPC 13(1)(c)/13(2) of Prevention of Corruption Act, 1988	2 years RI, fine of Rs.5000/-; 2 years RI, fine of Rs.5000/-; In default of fine amounts, additional RI for six months on each count.
03.	18/93	September, 88 to March, 88; Rs.45,874/-	409 of IPC 13(1)(c)/13(2) of Prevention of Corruption Act, 1988	3 years RI, fine of Rs.50,000/-; 2 years RI, fine of Rs.10,000/-; In default of fine amounts, additional RI for one year on each count.
04.	19/93	14.2.86 to 23.10.86; Rs.360/-	409 of IPC 13(1)(c)/13(2) of Prevention of Corruption Act, 1988	1 year RI, fine of Rs.3,000/-; 1 year RI, fine of Rs.2,000/-; In default of fine amounts, additional RI for six months on each count.
05.	20/93	5.2.88 to 28.8.88; Rs.37,925/-	409 of IPC 13(1)(c)/13(2) of Prevention of Corruption Act, 1988	3 years RI, fine of Rs.40,000/-; 2 years RI, fine of Rs.10,000/-; In default of fine amounts, additional RI for one year on each count.

02. Considering the facts and circumstances of the case, all these five appeals are being disposed of by this common judgment.

03. Learned counsel for the appellant submits that he is not pressing the conviction of the appellant and is confining his arguments only to the sentence part. He submits that the appellant stands convicted in five different matters under Section 409 of IPC and Section 13(1)(c)/13(2) of Prevention of Corruption Act, 1988 by separate judgments and as such, his substantive jail sentence period comes to 20 years in all those five matters. He submits that considering the facts and circumstances of the case, the age of the appellant, the amount misappropriated, the fact that all the offences took place way back in the years from 1984-1988, the provisions of Section 427 of CrPC, the jail sentences imposed in five different trials may be directed to run concurrently and further considering the period of detention of the appellant i.e. about 11 months, he may be sentenced to the period already undergone by him. He submits that the entire fine amount has already been deposited by the appellant and the amount misappropriated has already been recovered from the appellant by the insurance company.

04. On the other hand, learned counsel for the respondent/CBI supports the impugned judgments and submits that the trial Court considering all the relevant aspects of the matter has rightly convicted and sentenced the appellant, which needs no interference by this Court.

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

06. Though the accused/appellant has not challenged his conviction and has prayed for reduction of sentence only, however, it is a well settled principle of law that without discussing merits as to legal sustainability of conviction, the Court should not reduce the sentence because such mode defeats the fundamental purpose of justice delivery system.

07. From perusal of the impugned judgments and the material available on record, it is found that the trial Court on close scrutiny of the oral and documentary evidence adduced by the prosecution, the conduct of the accused, keeping in view several judgments of the Hon'ble Supreme Court governing the field recorded a finding that at the relevant time, the appellant was a public servant working with Oriental Insurance Co. Ltd., Branch-Raipur (CG), he fraudulently misappropriated certain amounts as described in the table mentioned above, received from several persons/banks on different occasions for his own use, thereby committed criminal breach of trust and as such, convicted him under Section 409 of IPC and Section 13(1)(c)/13(2) of Prevention of Corruption Act, 1988. The said finding of the trial Court being based on proper appreciation of the evidence needs no interference by this Court.

08. As regards the sentence, considering the facts and circumstances of the case, the age of the appellant at present i.e. 67-68 years, his poor health condition, the fact that the entire fine amount has already been deposited by him and the amount misappropriated has already been recovered from him by the insurance company as submitted by the appellant and not disputed by the other side, he has

already been dismissed from services as also the fact that all the offences took place way back in the years from 1984 to 1988, the provisions of Section 427 of CrPC, in view of judgment of the Hon'ble Apex Court in *Benson* (supra), this Court is of the opinion that ends of justice would be served if the jail sentences awarded to the appellant are directed to run concurrently and further, he is sentenced to the period already undergone by him which comes to about 11 months, while maintaining the fine sentences with default stipulations.

09. In the result, all these appeals are allowed in part. While maintaining conviction of the appellant under Sections 409 of IPC and Section 13(1)(c)/13(2) of Prevention of Corruption Act, 1988, his jail sentence is reduced to the period already undergone by him. The appellant is on bail, therefore, his bail bonds shall remain in operation for a period of six months from today in view of provisions of Section 437A of CrPC.

Sd/

(Gautam Chourdiya)

Judge