

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 363 of 2010

Order reserved on 25.02.2019

Order pronounced on 08.03.2019

Jeevan Singh Thakur Son of Bisahu Singh Thakur, aged about 65 years resident of Thakur Para Thana - Kawardha, District - Kabirdham, CG.

---- Applicant

Versus

State of Chhattisgarh, through District Magistrate, Tehsil - Kawardha, District - Kabirdham, CG.

---- Respondent

For Applicant	: Shri Ajit Singh, Advocate
For State/Respondent	: Shri Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

On 29.02.2008 the accused/applicant who was working as peon in the Sahakari Vipadan Samiti Maryadit Kawardha, misappropriated the sale proceeds of the kerosene entrusted to him for being delivered at Jamuniya Society, amounting to Rs. 27,825/-. On suspicion, the accused/applicant was subjected to inquiry where he made a discloser statement that the sale proceeds amounting to Rs. 27,825/- were retained by him and distributed among his colleagues who were also made accused in this case. Thereafter, he along with the co-accused were taken into custody and an offence u/s 379 and 407/34 was registered against them followed by filing of *challan* and framing of charge by the trial Court.

2. Accused Rohit was declared as absconder and the other two have been acquitted by the trial Court itself. However, the accused/applicant herein has been convicted u/s 407 IPC and sentenced to undergo RI for six

months with fine of Rs. 1,000/- vide judgment dated 19.08.2009 which subsequently has been affirmed by the Lower Appellate Court by passing the judgment impugned dated 21.07.2010. Hence this revision.

3. Conviction part of the judgment under challenge is not being assailed by the counsel for the accused/applicant at this stage. His sole submission is for reduction of sentence to the period already undergone which in this case comes to 21 days keeping in mind the fact that the case is being prosecuted by him for last 11 years and that by now he must be bearing the burden of family responsibilities. State counsel however supports the judgment impugned.

4. PW-1 has stated that the applicant had delivered the kerosene at the appointed place and had obtained Rs. 27,570/-. He states that the applicant had disclosed to him that four five persons covering their face had made him captive and on coming to know all this, written report Ex. P-1 was lodged. President of the Jamuniya society (PW-5) has also supported the case of the prosecution stating that after taking the kerosene, she had made payment of Rs. 27,800/- to the accused/applicant. More importantly, the accused/applicant himself had disclosed that on seeing the huge amount of Rs. 27,825/- he had developed greed in his mind and instead of depositing the said amount in the society he retained the same with him and subsequently the same was distributed among his colleagues. On the memorandums of the accused/applicant Ex. P-8, money was also seized from his possession under Ex. P-9 though the currency notes were having the different denominations, which hardly makes any difference in such cases. The seizure witnesses PW-2 and PW-4 have also supported the case of the prosecution. Thus the involvement of accused/applicant in commission of criminal breach of trust is clearly made out against him and the Courts below appear to be fully justified in holding him guilty u/s 407 IPC. Conviction of the accused/applicant is thus maintained.

5. As regards sentence, keeping in mind various factors existing at the present such as the case is quite old, he has already remained inside for 21 days and by now he must be reeling under the pressure of family responsibilities, interest of justice tilts in his favour. Accordingly, this Court does not see any reason to again send him to jail and thereby disturb his well settled family life. Being so, the jail sentence imposed on him is reduced to the period already undergone by the accused/applicant.

6. With the above observations and modifications in the order impugned, the revision is thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan