NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on 05.03.2019

Order pronounced on 11.12.2019

CRR No. 426 of 2006

Shaukat Ali, S/o. Babu Bhai Mistri, aged about 45 years, R/o. Near Gardarpul, Dalli Rajahara, District Durg, CG.

---- Applicant

Versus

State of Chhattisgarh, through The Officer in-charge, P.S. Rajahara, District Durg, CG, also through the District Magistrate Durg, CG. **---- Respondent**

With

CRR No. 504 of 2006

Murlidhar aged about 45 years, son of Shri Jhadu Ram Mahar, Resident of Village Purana Bazar, Dalli Rajhara, District Durg, CG.

---- Applicant

Versus

The State of Chhattisgarh, through the SHO P.S. Rajahara District Durg (The District Magistrate Durg, CG.)

---- Respondent

With

CRR No. 492 of 2006

Murlidhar aged about 45 years, son of Shri Laduram Maratha, Resident of Village Purana Bazar, Dalli Rajhara, District, Durg, CG.

---- Applicant

Versus

The State of Chhattisgarh, through the SHO P.S. Rajahara District Durg (The District Magistrate Durg, CG.)

---- Respondent

For Applicant/s : Shri M.P.S. Bhatiya, Advocate

For Respondent : Shri Aman Kesharwani, PL

<u>Hon'ble Smt. Justice Vimla Singh Kapoor</u>

<u>C.A.V Order</u>

Since all these three revisions pertain to the same incident, they are being disposed of by this common order.

2. **<u>CRR No. 426/2006 and CRR No. 504/2006 :</u>** As per the FIR (Ex. P-1) lodged by Naresh (PW-2), the accused/applicants who were already acquainted to Hemnath (PW-5) contacted the complainant and on the pretext of doubling the amount they obtained Rs.30,000 from him on different occasions and when he approached them for return of the amount, they continued beguiling him on one pretext or the other including that their boss was out of station and the machine was not available. When the complainant did not receive the amount and was fed up with the fake assurance of the accused Murlidhar, he eventually lodged the report on the basis of which offence under Section 420/34 IPC was registered against the accused/applicants herein and two others. After completion of investigation charge sheet was filed against them under the same section followed by framing of charge accordingly. Learned Magistrate convicted the accused/applicants under Section 420/34 IPC and sentenced each of them to undergo RI for three years and pay fine of Rs.5000, plus default stipulations. Learned lower appellate Court vide judgment impugned dated 27.06.2006 upheld the findings recorded by learned Magistrate as a whole. Hence these revisions.

3. **<u>CRR No. 492/2006:-</u>** This case pertains to FIR (Ex.P-1) lodged by Siryaram (PW-6) against accused Dhanaji, Gayaram and Murlidhar to the effect that they with the assistance of Anandram (PW-4) contacted him and raised demand of Rs.10,000 on the pretext of doubling the same within 7 days therefrom.

Accused Dhanaji had told him to return the amount after doubling-tripling after an hour and then extended the time to a day or two as the machine was not functional and that their employee was out of station. Ultimately when the accused/applicants did not return the amount paid by Siyaram (PW-6), FIR (Ex.P-1) came to be lodged against them under Section 420/34 IPC, after investigation the charge sheet was filed followed by framing of charge accordingly. Learned Magistrate convicted the accused persons including the applicant herein under Section 420/34 IPC and sentenced each of them to undergo RI for three years and pay fine of Rs.5000, plus default stipulations. Learned lower appellate Court vide judgment impugned dated 27.06.2006 upheld the findings recorded by learned Magistrate as a whole. Hence these revisions.

4. Counsel for the accused/applicants submits that the judgment impugned is not in accordance with the evidence of the witnesses and therefore, is liable to be set aside. State counsel however supports the judgments impugned.

5. Material on record goes to show that both the complainants namely Naresh and Siyaram were cheated by the accused by the accused/ applicants herein by extorting money from them under the guise of doubling the same. Though the role of accused/applicant Shaukatali was that when the complainant Naresh insisted for return of amount, he threatened him saying that the currency notes worth Rs.10,000 were destroyed and the machine also got out of order in the process of doubling his amount, and thus he was involved in the incident in furtherance of common intention with the other accused persons. As regards accused Murlidhar, complainant Naresh has categorically stated

that he paid the amount to Murlidhar in presence of Hemnath. Likewise, other complainant Siyaram has also stated that Rs.10,000 were paid by him to accused persons namely Dhanaji, Murli, Gayaram in presence of Anandram. Hemnath and Anandram have also supported the case of the prosecution stating that the payment was made by Naresh and Siyaram respectively to the accused persons including Murlidhar in their presence.

6. Thus the involvement of the accused/applicants in the crime in question punishable under Section 420 IPC is apparent and being so both the Courts below have not committed any illegality in convicting the accused/applicants under Section 420/34 IPC. It is accordingly maintained.

7. However, looking to the fact that the incident had taken place in the year 1995 and that way about 24 years have rolled by since then, and further that the accused/applicant Murlidhar has already remained inside for about 9 months and 20 days whereas accused Shaukat Ali had been inside for 7 months and 20 days and thus have already suffered enough for their act, no useful purpose is going to be served in further sending them to jail at this stage. Accordingly, their sentence is reduced to the period already undergone. Order accordingly.

8. Revisions thus allowed in part.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/ajay.