

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1024 of 2017

Order Reserved on : 15.2.2019

Order Passed on : 8.5.2019

1. Vilas Jadhav, S/o Kishan Jadhav, aged about 56 years, R/o Surabhi Colony Anwarabhata, P.S. Dantewada, District South Bastar Dantewada, Chhattisgarh
2. M.K. Ruggi, S/o S.R. Ruggi, aged about 58 years, R/o Q.No.03, Janpad Panchayat Parisar, Bhairamgarh, District Beejapur, Chhattisgarh

---- Applicants

versus

State of Chhattisgarh through P.S. Sukma, District Sukma, Chhattisgarh

--- Respondent

For Applicants	:	Shri R.S. Marhas, Advocate
For Respondent	:	Shri Alok Nigam, Government Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the judgment dated 27.10.2017 passed by the 1st Additional Sessions Judge, South Bastar Dantewada in Criminal Appeal No.12 of 2015 arising out of the judgment dated 15.10.2015 passed by the Chief Judicial Magistrate, Sukma in Criminal Case No.132 of 2012. The Appellate Court has affirmed the conviction of the Applicants under Sections 420/34, 467/34 and 468/34 of the Indian Penal Code and the sentence of rigorous imprisonment for 6 years, 6 years and 6 years awarded thereunder, but has reduced the amount of fine to Rs.10,000/- for each of the aforesaid offences with default stipulations. The Appellate Court has acquitted the Applicants of the charge framed under Section 409/115 Part II of the Indian

Penal Code.

2. Facts of the case, in a nutshell, are that at the relevant time between 4.3.2005 and 29.5.2005, Applicant No.1/accused Vilas Jadhav was posted as a Sub-Engineer in the Irrigation Department at Sukma and Applicant No.2/accused M.K. Ruggi was posted there as an Assistant Engineer. Other co-accused P.R. Thakur, who died during pendency of the trial, was also posted there as a Sub-Engineer. On 13.4.2006, Chief Executive Officer, Janpad Panchayat Chhindgarh, District Dantewada lodged a written report (Ex.P30) in Police Station Sukma alleging that in 2004-2005, in Block Chhindgarh, under the Drought Relief Scheme from (i) Dhabanpal to Paikpara and from (ii) Gudra to Gumtapara approach roads were got constructed under the supervision of Applicant No.1, Vilas Jadhav. Allegedly, in the measurement book, 12321.39 cubic metres excess work of earth was shown to be done relating to the approach roads from Dhabanpal to Paikpara due to which the Government sustained a loss of Rs.3,35,512/-. Regarding the approach road from Gudra to Gumtapara also, 881.42 cubic metres additional measurement for Rs.24,005/- was shown in the measurement book. Earth work of 12272.10 cubic metres was shown to be done in excess due to which loss of Rs.3,34,173/- was suffered by the Government. Against deceased accused P.R. Thakur, it was alleged that he, in construction of a pond in Village Kodrikusum and in construction of approach road from Ratinaikras to Hikmiras, committed irregularities by making false measurements and thereby caused losses of Rs.1,94,760/- and Rs.2,35,748/- to the Government. As regards construction of approach road from Reddipal to Chhurragatta also, excess

measurement relating to earth work was shown by deceased accused P.R. Thakur which resulted into a loss to the Government to the tune of Rs.3,31,496/-. Since Applicant No.2, M.K. Ruggi was posted as a Sub-Divisional Officer and in that capacity he verified the works done by Sub-Engineers Vilas Jadhav (accused/Applicant No.1) and P.R. Thakur (deceased accused), he has also been implicated as an accused in the case. On the basis of the written report (Ex.P30), First Information Report was registered and on completion of investigation, a charge-sheet was filed before the Judicial Magistrate First Class, Sukma. Charges were framed under Sections 409/34, 420/34, 467/34 and 468/34 of the Indian Penal Code against all the three accused persons by the Chief Judicial Magistrate, Dantewada. The prosecution examined as many as 15 witnesses in support of its case. In their statements under Section 313 of the Code of Criminal Procedure, the accused persons denied the guilt and pleaded innocence. No witness has been examined in their defence.

3. Vide judgment dated 15.10.2015, the Trial Court/Chief Judicial Magistrate, Sukma convicted and sentenced the Applicants/accused for offences punishable under Sections 409/115 Part II, 420/34, 467/34 and 468/34 of the Indian Penal Code. As stated in the first paragraph of this order, vide impugned judgment dated 27.10.2017, the Appellate Court/1st Additional Sessions Judge, Dantewada acquitted the Applicants/accused of the charge framed under Section 409/115 Part II of the Indian Penal Code, affirmed their conviction and jail sentence for the offences under Sections 420/34, 467/34 and 468/34 of the Indian Penal Code, but reduced their sentence of fine. Being aggrieved

by the conviction and sentence, the instant revision has been preferred by the Applicants/accused.

4. Learned Counsel appearing for the Applicants submitted that the Appellate Court has ignored that once it was found that the offence under Section 409 IPC is not made out then other offences also go. Material contradictions and omissions have occurred in the testimonies of the prosecution witnesses. All the prosecution witnesses have admitted the fact that there was no role of the Applicants in making payment of wages to the labours and the work done was earth work which was completed prior to rainy season and inspection was done much after the rainy season and in the subject work no road roller was used. Therefore, there was every possibility of damage to the earth work. But, both the Courts below have ignored this fact. From the evidence adduced by the prosecution, no offence under Section 420 or 467 or 468 IPC is made out because the prosecution has not been able to establish any of the ingredients of the said alleged offences.
5. Learned Counsel appearing for the State/Respondent opposed the arguments advanced on behalf of the Applicants and supported the impugned judgment.
6. I have heard Learned Counsel appearing for the parties and perused the records with due care.
7. Cheating is defined in Section 415 of the Indian Penal Code as under:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person

so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

8. Forgery is defined in Section 463 of the Indian Penal Code as under:

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

9. The evidence adduced by the prosecution in the case in hand is to be examined in the light of above-quoted provisions. To rope in the accused persons, the prosecution has examined as many as 15 witnesses.
10. Satish Chand Thakur (PW1), Surendra Goswami (PW2) and Sukka Singh (PW3) are witnesses of seizures. Though they have stated that seizures were made before them, what documents were seized are not known to them.
11. Balkrishna Yadav (PW4), Devendra Kumar Dubey (PW5), K.S. Ramaiyya (PW7) and Mahesh Kumar Sharma (PW8) are the witnesses who inspected the works done by the accused persons

and gave their reports.

- 12.** Laxman Baghel (PW10), Mahadeo Singh (PW11), Gangaram (PW12) are the witnesses who were posted as Gram Panchayat Secretary at the relevant time. They have categorically stated that all the works were done under the Gram Panchayat. A muster roll was being prepared under the Gram Panchayat for all the labours who were engaged in the said works. The labours were being paid their wages according to the said muster roll. For making such payments, a separate Nodal Officer was appointed by the Government. The accused persons had no role in any withdrawal or payment of wages to the labours. Gangaram Markam (PW13) has also supported the above facts who was at the relevant time the Sarpanch of Village Dhabanpal.
- 13.** Balkrishna Yadav (PW4) has deposed that in compliance with the order dated 5.1.2005 of Zila Panchayat, Dantewada, an inspection team comprising of him had gone for inspection of the works done by the accused persons. They had inspected the approach road constructed from Gudra to Gumtapara. It was found that in measurement book (Article A), accused/Applicant No.1, Vilas Jadhav had made many additions, alterations and over-writings, but he had not put his signatures against those changes. According to the said measurement, Applicant No.1, Vilas Jadhav had shown additional measurement of 881.42 cubic metres due to which a loss of Rs.24,005/- was suffered by the Government. It has been further stated by Balkrishna Yadav (PW4) that additional earth work of 12272.10 cubic metres was shown in the measurement book by Applicant No.1, Vilas Jadhav due to which a

loss of Rs.3,34,173/- was suffered by the Government. It has been further stated by the witness that in the measurement book, Applicant No.1, Vilas Jadhav had committed mistake in the calculations. It has been further stated by the witness that in the inspection of the approach road constructed from Dhabanpal to Paikpara, it was found that actual length of the said approach road was 1900 metres, but Applicant No.1, Vilas Jadhav had shown the said length in the measurement book to be 2500 metres. The witness has further stated that between the said approach road, a *nala* (drainage) of 97 metres was existing to which also Applicant No.1, Vilas Jadhav had added in his measurement of the approach road. The witness has further stated that for the earth work for the said approach road, an excess measurement of 490 cubic metres was shown in the measurement book due to which a loss of Rs.13,369/- was suffered by the Government. It was also found that in the said earth work, excess earth work of 12321.39 cubic metres was shown by him in the measurement book due to which a loss of Rs.3,35,512/- was suffered by the Government. This witness has also stated about the irregularities committed by deceased accused P.R. Thakur. Since P.R. Thakur died during trial, I am not inclined to discuss the evidence adduced by the prosecution in his regard. The role of accused/Applicant No.2, M.K. Ruggi was that he had verified the works done by accused/Applicant No.1, Vilas Jadhav. All other witnesses of said inspection team, i.e., Devendra Kumar Dubey (PW5), K.S. Ramaiyya (PW7) and Mahesh Kumar Sharma (PW8) have also stated in similar terms as has been stated by Balkrishna Yadav (PW4). In their cross-examination, all the above witnesses have admitted the fact that before doing inspection or at the time of

doing inspection they had not given any notice to the accused/Applicants nor were the Applicants present at the spot. Balkrishna Yadav (PW4), in paragraph 18, in cross-examination, has admitted that during inspection of the approach roads, they had not used level peti for measuring height of the approach roads. It has also been admitted by him that all the works were done under the Drought Relief Scheme and all the works were relating to the Gram Panchayat. It has also been admitted by him that the Gram Panchayat Secretary was to maintain presence of the labours daily and he was marking their presence daily. According to the presence of the labours, they were being paid their wages. Nodal Officers were appointed by the Government in each of the Gram Panchayats for making payment of wages to the labours. It was further admitted by him that under the Drought Relief Scheme, the concerned Chief Executive Officer of the Gram Panchayat issued cheque for concerned amount which was being deposited in the joint bank account of concerned Gram Panchayat Secretary and Sarpanch. The Nodal Officer, after withdrawing the said amount from the joint bank account of the Sarpanch and Gram Panchayat Secretary, was making payment of wages to the labours in presence of the concerned Sarpanch and the Gram Panchayat Secretary. In paragraphs 34, 35 and 36, it has also been admitted by the witness that all the works done were earth works and in these earth works only dressing was done not any compaction was done by any roller. The concerned Executive Engineer inspects the works done and the works are treated to be completed only after inspection of the Executive Engineer. In paragraphs 46 and 47, the witness has also admitted that the entries made in the measurement book are compared by the Accountant and if any

entry is found to be missing, the same is got filled in by the concerned Sub-Engineer. The witness has also admitted that in the instant case also, if the Accountant had compared the entries of the measurement book, all the clerical deficiencies would have been removed. The witness has also admitted that there was no role of Sub-Engineer Vilas Jadhav (Applicant No.1) and S.D.O. M.K. Ruggi (Applicant No.2) in making payment of wages to the labours. In paragraphs 55 and 56, the witness has also admitted that in the year 2005, in Bastar Division, a heavy rainfall had taken place in rainy season and a flood had also taken place against which the Government had also run a relief work. All the works done in that area were relating to the earth, which was done in summer season under the Drought Relief Scheme and the inspection of the said work was done in the month of November, 2005, i.e., after the rainy season. In paragraph 86, the witness has also admitted the fact that there was every possibility of change in the work done due to the heavy rainfall. In paragraph 106, the witness has also admitted that at the time of inspection, if the Applicants/accused had been called, the status of whole length of the complete approach roads would have been clear.

- 14.** From the above evidence adduced by the prosecution and the admissions made by Balkrishna Yadav (PW4), it is clear that all the works were earth work which were done under the Drought Relief Scheme. In the said earth work, only dressing was done and no roller was used for compaction. It is also clear that in that area, a heavy rainfall and a flood had taken place. The inspection of the spot was done in the month of November. Since only dressing was done in the said earth work and no compaction was done by any

roller, possibility of flowing of earth here and there in the flood cannot be ruled out. Therefore, at the time of inspection, finding of differences in the measurement of the earth work was possible and natural. From the evidence on record, it is also clear that at the time of inspection, neither the Applicants/accused were called by giving them any notice nor was the concerned Gram Panchayat Secretary or the Sarpanch called at the spot. If the Gram Panchayat Secretary and the Sarpanch had been called at the spot, they would have cleared the actual position, possibility to this effect cannot be ruled out. From the evidence, it is also clear that according to the prevalent system, neither the Executive Engineer inspected the spot nor the Accountant verified the entries of the measurement book. If such measures had been taken, the clerical mistakes occurred in the measurement book would have been removed. From the evidence, it is also clear that the work done was under the Drought Relief Scheme. The sanctioned amount was directly being deposited in the joint bank account of the Gram Panchayat Secretary and the Sarpanch and the Nodal Officer, after withdrawing the amount from the said joint bank account, was making payment of wages to the labours according to their presence recorded in the muster roll. The Applicants/accused had no role in withdrawal or payment of wages to the labours. Therefore, there is no evidence on record to show that the Applicants were beneficiaries of any of the excess amount paid to the labours. From the evidence on record, the basic ingredients for the offences punishable under Sections 420, 467 and 468 of the Indian Penal Code are not established. Therefore, the findings of both the Courts below are not in accordance with the evidence available on record. Hence, the findings are held to be perverse.

- 15.** Consequently, the revision is allowed. The impugned judgment of conviction and sentence dated 27.10.2017 is set aside. The Applicants are acquitted of the charges framed against them under Sections 420/34, 467/34 and 468/34 of the Indian Penal Code.
- 16.** Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge