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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.871 of 2014

Order Reserved on : 16.11.2018

Order Passed on : 5.2.2019

1. Kalpana Swami, D/o Late Krishna Swami, aged about 38 years, R/o Qtr. No. 359/2, Behind Running Room, P.S. Gudhyari, District Raipur, Chhattisgarh, Civil and Revenue District Raipur, Chhattisgarh
2. Md. Nazir Imam, S/o Md. Mobir (Constable, Railway Security Force), aged about 54 years, R/o Village Jaanpur, P.S. Bachwara, District Venusaray (Bihar), At present Qtr. No.359/02, Loco Colony, P.S. Gudhyari, District Raipur, Chhattisgarh, Civil and Revenue District Raipur, Chhattisgarh

---- Applicants

versus

The State of Chhattisgarh through D.M., Raipur, District Raipur, Chhattisgarh

--- Respondent

For Applicants	:	Shri A.K. Prasad, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred by the Applicants against the judgment dated 17.11.2014 passed by the Sessions Judge, Raipur in Criminal Appeals No.195 of 2014 and 196 of 2014, whereby the Sessions Judge has affirmed the judgment dated 22.8.2014 passed by the Special Railway Magistrate, Raipur in Criminal Case No.7969 of 2013 convicting and sentencing the

Applicants as under:

<u>Applicants</u>	<u>Conviction</u>	<u>Sentence</u>
Applicant No.1	Under Section 381 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.5,000/- with default stipulation
Applicant No.2	Under Section 414 of the Indian Penal Code	Rigorous Imprisonment for 3 years and fine of Rs.2,000/- with default stipulation

2. Case of the prosecution, in brief, is that on 30.9.2013, Padma Jyoti Adhiraj (PW4) was on duty in the office of the Chief Reservation Supervisor, Raipur and she had received a sum of Rs.1,77,560/- as cash and vouchers against making reservations in trains on that date, but she did not deposit the said amount. Next day, on 1.10.2013, at 10:30 A.M., when cash was compared, sum of Rs.1,77,560/- was found to be less. On being inquired from Padma Jyoti Adhiraj (PW4), she told that after discharged of her duty in the last night, she had handed over the cash of Rs.1,77,560/- to her colleague Kiran Kumar (PW2), who was working at Counter No.13. But, Kiran Kumar (PW2) also forgot to deposit the amount. On 1.10.2013, in the morning shift, Applicant No.1 Kalpana Swami was on duty on Counter No.13. From the footage of CCTV, it was found that at 9:58 A.M., from the drawer of Counter No.13 Applicant No.1 took out the money and wrapping the money with a red cloth she took the same with her out of the counter and went out of the office. A report was made by one M.V.K. Rao (PW1). On the basis of the said report, the offence has been registered. During the course of investigation, it was found that out of that money, Applicant No.1 gave a sum of Rs.1,69,665/- to Applicant No.2 for hiding. On the basis of memorandum

statement of Applicant No.2, cash of Rs.1,69,665/- was seized from him. On completion of the investigation, a charge-sheet was filed against both the Applicants. The Trial Judge framed charges against Applicant No.1 for offence punishable under Section 381 of the Indian Penal Code and against Applicant No.2 for offence punishable under Section 414 of the Indian Penal Code.

3. In support of its case, the prosecution examined as many as 8 witnesses. Statements of the Applicants under Section 313 Cr.P.C. were also recorded in which they denied the guilt. 2 witnesses were examined by the defence. It was the defence of the Applicants that while interrogating Applicant No.1, she refused taking the money. On her refusal, she was told that on not being refunded the money, a report will be lodged against her and as a result of which her job could be terminated. Then, with the help of Jaisukhlal (DW1) and Haider Raza (DW2), she gave a sum of Rs.1,80,000/- and out of this money the police showed forged seizure of cash of Rs.1,69,665/- from Applicant No.2.
4. After trial, the Trial Court convicted and sentenced the Applicants and the Appellate Court affirmed the judgment of the Trial Court as mentioned in the first paragraph of this order.
5. Learned Counsel appearing for the Applicants submitted that the case of the prosecution is based on the footage of CCTV Camera of concerned office room and also based on the memorandum statement of Applicant No.2 and on the basis of said memorandum statement, recovery of Rs.1,69,665/- was made. Learned Counsel further submitted that both the witnesses of memorandum and seizure, namely, Umesh Verma (PW3) and P. Som Shekhar Rao

(PW7) have categorically stated that on 2.10.2013, from 8 AM to 3 PM, according to the office record, they were present in the office. In these circumstances, presence of PW3 and PW7 at the time of recording of the memorandum statement of Applicant No.2 and making of recovery of the cash from him cannot be said to be possible. Both the above witnesses have also admitted the fact that the documents from Ex.P7 to P10 were prepared in the police station by the police and those documents were signed by these witnesses in the police station itself. Therefore, the memorandum statement and the seizure is not duly proved. He further submitted that though from perusal of the judgment passed by the Trial Court it reflects that the Trial Court had seen the footage of the CCTV Camera recorded in CDs which are from Articles 5 to 18 and the conviction imposed by the Trial Court is based on the said footage of the CCTV Camera which was seen by the Trial Judge and that judgment of the Trial Judge has been affirmed by the Appellate Judge, the order-sheet dated 7.8.2014 of the Trial Court shows that the Trial Court had found that seeing of the CDs (Articles 5 to 18) of the footage of the CCTV Camera was essential, but that seeing could not be possible due to fault in the CD Drive of the CPU of the Computer installed in the Court Room of the Trial Judge. Therefore, the Trial Judge had requested to the District Judge for providing another CPU. Thereafter, the order-sheet dated 22.8.2014 shows that without seeing those CDs (Articles 5 to 18), the Trial Court delivered its judgment. Thus, it is not established that when and where and in whose presence the Trial Judge saw those CDs (Articles 5 to 18). Therefore, from the record, it is clear that those CDs were not seen in the Court Room of the Trial Judge nor was any opportunity afforded to the defence to see those CDs

and cross-examine on the point of the CCTV footage in question. Therefore, the whole trial is vitiated. Hence, the finding of conviction of the Applicants arrived at by the Trial Court as well as by the Appellate Court is perverse and the Applicants are entitled to get benefit of doubt.

6. Learned Counsel appearing for the State/Respondent opposed the above contentions put-forth on behalf of the Applicants and supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the record with due care.
8. The question for consideration before this Court is whether the finding of the Courts below suffers from any illegality and perversity.
9. The prosecution examined as many as 8 witnesses, namely, M.V.K. Rao (PW1), Kiran Kumar (PW2), Umesh Verma (PW3), Padma Jyoti Adhiraj (PW4), Krishna Kumar (PW5), H.C. Nayak (PW6), P. Som Shekhar Rao (PW7) and Investigating Officer S.L. Chandrakar (PW8). The Applicants, in their defence, examined Jaisukhlal (DW1) and Haider Raza (DW2).
10. M.V.K. Rao (PW1) has stated that on 30.9.2013, Padma Jyoti Adhiraj (PW4) was on duty at Reservation Counter No.13 from 10 AM to 5 PM. On 1.10.2013, at the time of comparing of the cash of Counter No.13, the cash collected by Padma Jyoti Adhiraj (PW4) was not found. Then M.V.K. Rao (PW1) inquired about this. Padma Jyoti Adhiraj (PW4) told that she had left the collected cash with Kiran Kumar (PW2) at Counter No.13 for depositing the same

and thereafter she had left for her house. M.V.K. Rao (PW1) has further stated that he asked Kiran Kumar (PW2) about this. Kiran Kumar told that he had kept the cash in the drawer of Counter No.13 and had forgotten to deposit the same. Thereafter, when M.V.K. Rao (PW1) checked the said drawer of Counter No.13 he did not find the money. Padma Jyoti Adhiraj (PW4) and Kiran Kumar (PW2) have duly corroborated the above facts.

11. M.V.K. Rao (PW1) has further stated that thereafter he saw the CCTV footage. On seeing the footage, he found that Padma Jyoti Adhiraj (PW4) had kept the cash collected by her in the drawer of Counter No.13 and on further seeing the footage till the time of 10 PM it was found that the said cash was not taken out from the drawer nor was the same deposited. He has further stated that on seeing the footage of the morning of the next day it was found that at about 10 AM Applicant No.1 opened the said drawer and took out the bundle kept therein and wrapped the said bundle with her scarf and thereafter kept the said wrapped bundle in her bag and after obtaining permission to visit a doctor she went out with the bag. M.V.K. Rao (PW1) has further stated that thereafter he informed about this to his higher officials and showed them the said CCTV footage. The said CCTV footage was also shown to Applicant No.1, but she refused doing the alleged act. In paragraph 14 of his cross-examination, M.V.K. Rao (PW1) has admitted the fact that Applicant No.1 had told that she will return after visiting the doctor within 1 hour and she had returned and after her return also she was having her said bag in her hands.
12. Krishna Kumar (PW5) is the witness from whom a hard disc (Article 19) of Seagate Company of 2000 GB containing the

relevant CCTV footage was seized vide Ex.P6.

- 13.** Umesh Verma (PW3) and P. Som Shekhar Rao (PW7) are the witnesses before whom the memorandum statement (Ex.P7) of Applicant No.1 and the memorandum statement (Ex.P8) of Applicant No.2 were recorded and on the basis of those memorandum statements, Applicant No.2 took out the cash of Rs.1,69,665/-, which was wrapped in a scarf and kept in the Activa vehicle parked in front of Quarter No.359/2, Loco Colony, Raipur and gave the same to the Investigating Officer. Memorandum statement of Applicant No.1 was recorded vide Ex.P7 on 2.10.2013 at 10 AM and that of Applicant No.2 was recorded vide Ex.P8 on 2.10.2013 at 11:30 AM. The cash of Rs.1,69,665/- was seized from Applicant No.2 vide Ex.P9 on 2.10.2013 at 12 Noon. Both the witnesses of the memorandum statements and the seizure, namely, Umesh Verma (PW3) and P. Som Shekhar Rao (PW7) have supported the above facts of recording of the memorandum statements and the seizure of cash, but both the witnesses have admitted the fact that according to their office record, they were present on their office duty in the railway station on 2.10.2013 from 8 AM to 3 PM. In paragraphs 18, 23 and 24 of his cross-examination, Umesh Verma (PW3) has categorically stated that all the documents from Ex.P7 to P10 were prepared at the police station itself, but no such proceeding was done in his presence at the time mentioned in those documents.
- 14.** P. Som Shekhar Rao (PW7), who is another witness of the memorandum statements of the Applicants and the seizure of cash, during his cross-examination, has also admitted that Applicant No.1 was inquired by one lady police officer and her

statement was also recorded by that lady police officer and that lady police officer herself had taken Applicant No.1 to Applicant No.2 and after pressuring Applicant No.2, that lady officer herself had recorded the statement of Applicant No.2. This witness has further stated that at the time of seizure also, Investigating Officer S.L. Chandrakar (PW8) was not present at the spot and he was sitting in the police station. As stated by this witness, at the time of recording of all the proceedings, the Investigating Officer was not present at the spot, rather he was sitting in the police station and all the proceedings were recorded by that lady police officer.

15. It was the defence of the Applicants that on being pressurised by the police, Applicant No.1, with the help of Jaisukhlal (DW1) and Haider Raza (DW2), had called cash of Rs.1,80,000/-, which was kept by Applicant No.2 and out of that cash, false seizure of cash of Rs.1,69,665/- from Applicant No.2 was shown. From the statements of Jaisukhlal (DW1) and Haider Raza (DW2), it is only established that DW1 had borrowed a sum of Rs.1,80,000/- from DW2 and given the same to Applicant No.2 on 1.10.2013. From the statement of Jaisukhlal (DW1), it is also established that on 1.10.2013, Jaisukhlal (DW1) had transferred the amount of Rs.1,80,000/- from the account of Applicant No.1 to the account of his son Sumil. Thereafter, on 2.10.2013, cash of Rs.1,69,665/- was seized from the Acura vehicle at the instance of Applicant No.2.
16. From perusal of paragraphs 16 and 19 of the judgment of the Trial Court, it appears that the Trial Judge has seen the CDs (Articles 5 to 18) of the CCTV footage minutely and basing the said CCTV footage, the Trial Judge has delivered his judgment. The order-

sheet dated 7.8.2014 of the Trial Court shows that on that date the case was fixed for delivery of judgment and on that date it was observed by the Trial Judge that going through the CDs (Articles 5 to 18) is essential for just decision of the case, but the CD Drive of the CPU of the Computer installed in the Court Room of the Trial Judge was having some technical problem and, therefore, the CDs (Articles 5 to 18) could not be seen on that date and a requisition was sent for supply of a new CPU and the case was fixed for 20.8.2014. On 20.8.2014, no action was taken regarding seeing of the CDs. Thereafter, on 22.8.2014 also, no action of seeing the CDs (Articles 5 to 18) was taken, but the judgment was delivered by the Trial Judge on that date and the said judgment has been based on seeing of the CDs (Articles 5 to 18) by the Trial Judge. Therefore, the record itself shows that when, where and in whose presence those CDs were seen by the Trial Judge is not apparent, but the judgment of the Trial Judge says that he had seen those CDs. It also appears that the defence has not been afforded any opportunity to cross-examine on the point of those CDs (Articles 5 to 18) nor have they been allowed to see those CDs in the Court. In these circumstances, the whole trial is vitiated. While allowing the appeal, the Appellate Court has also failed to consider this aspect of the matter. Apart from this, as discussed above, it is also clear that though Umesh Verma (PW3) and P. Som Shekhar Rao (PW7), the witnesses of the memorandum statements and the seizure of cash, have supported recording of the memorandum statements of the Applicants and the seizure of cash of Rs.1,69,665/- from Applicant No.2, both the witnesses have categorically stated that at the time of recording of the said proceedings they were present on their duty in their office and all

the relevant documents were written and prepared in the police station and thereafter they signed all those documents in the police station itself. Apart from this, P. Som Shekhar Rao (PW7) has also admitted that all the proceedings were done by a lady police officer. At that time, Investigating Officer S.L. Chandrakar (PW8) was sitting in the police station itself. That lady police officer, who did all the proceedings, has not been examined. In these circumstances, only on the basis of the statement of Investigating Officer S.L. Chandrakar (PW8), the recording of the memorandum statements of the Applicants and the seizure of cash from Applicant No.2 cannot be held to be reliable. Therefore, the reliance placed by the Trial Court as well as by the Appellate Court on the statement of Investigating Officer S.L. Chandrakar (PW8) cannot be considered to be in accordance with law.

17. In the premises of aforesaid, the instant revision is allowed. The judgments of the Trial Court and the Appellate Court are set aside. The Applicants are acquitted of the charges framed against them.
18. 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