

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 279 of 2005

Order reserved on 04.12.2018

Order pronounced on 08.02.2019

1. Awadh Ram Sahu son of Budhram (Peon) aged 50 years, labourer and permanent resident of village Khartora, in the Police Station area Pallari, District Raipur, CG **(dead)**
2. Nammulal Sahu son of Ghasiram, aged about 56 years, Cultivator and permanent resident of village Sarkhi in the Police Station Area Abhanpur, District Raipur, CG

--- Applicants

Versus

1. State of Chhattisgarh through (Police Station Pallari) the Collector, Raipur, District Raipur, CG

--- Respondent

For Applicants	-	Shri S.P. Sahu, Advocate.
For Respondent/State	-	Shri Gary Mukhopadhyaya, GA

CAV Order by Hon'ble Smt. Vimla Singh Kapoor, J.

Applicants herein have filed this revision petition against the judgment dated 28.06.2005 passed by Additional Sessions Judge, Baloda Bazar in Criminal Appeal No. 236/2004 maintaining their conviction u/s 409 IPC but reducing the jail sentence to one year from that of three years as imposed by the trial Court by its judgment dated 24.08.2004 passed in Criminal Case No. 31/1984.

2. Facts of the case in brief are that at the relevant time the surviving accused Nammulal was the in-charge manager and deceased-accused Awadhram was the salesman of Gramin Sahkari

Samiti, Khartora and thus being the public servant they mis-appropriated the consumables worth Rs. 15,032.12. On physical verification by the supervisor namely Motilal (PW-1) followed by audit done by auditor Tukaram (PW-6) also this mis-appropriation was worked out. On matter being reported to the police, offence under Section 409 IPC was registered against the accused/applicants herein and one Malikram (acquitted by the trial Court) and after completion of investigation *challan* was laid and charge framed accordingly.

3. On the basis of material on record, learned Magistrate found the accused/applicants herein guilty under Section 409 IPC but acquitted the accused Malikram at the same time. Judgment passed by learned Magistrate dated 24.08.2004 as regards conviction has been maintained but it has been modified as far as sentence imposed on the applicants is concerned. Hence this revision.

4. Counsel for the applicants submits that he is not pressing this revision on merit and his sole argument would be as regards sentence. He also submits that looking to the old age of the surviving applicant and the incident being quite old, it would be interest of justice if the sentence imposed on him is reduced to the period already undergone. State counsel however supports the judgment impugned as a whole.

5. Motilal (PW-1) who did physical verification of the stock vide reports Ex. P-1, P-2 and P-3 has stated that there was deficit in the stock of urea, food items and other consumables. He has further

stated that physical verification was done in presence of accused Nammulal and he even signed the reports Ex. P-1, P-2 and P-3. This witness has also stated that the key of the godown of the society always remained with accused Nammulal. Seizure of stock register, audit note, charge report of accused Nammulal made under Ex. P-6, P-10 and P-12 has also been supported by PW-1 and PW-3. Tukaram (PW-6) – the auditor who gave report Ex. P-18 has also supported the case of the prosecution stating that he noticed certain shortage in the stock of urea, rice, sugar, edible oil etc. Audit report Ex. P-15 also shows that deceased-accused Awadhram had also committed mis-appropriation of the food items and other consumables worth Rs. 9,304.15. All this apart, accused Nammulal has also admitted certain things in his statement recorded under Section 313 of the Code of Criminal Procedure while answering the question Nos. 1,3,12 to 18, 44 and 46 as regards the incident occurred in between 1.7.1980 and 30.6.1981, his posting as in-charge manager of the society at that time, shortage of urea noticed by PW-1 and PW-6, audit being done during that period, value of the deficit urea, physical verification of stock register etc. Thus in the light of the evidence of the witnesses it can safely be said that prosecution has proved its case beyond reasonable doubt that the accused/applicants committed criminal breach of trust in respect of the property they were entrusted being the in-charge manager and salesman of the Gramin Sahkari Samiti, Khartora. V.C. Jain (PW-7) is the investigating officer and he too has fully supported the case of the prosecution. In overall view of the matter, conviction of the accused/applicants under Section 409 IPC

being based on the evidence collected by the prosecution does not suffer from any illegality or infirmity and it is maintained accordingly.

6. As regards sentence, considering the age of the surviving accused Nammulal which at present appears to be 70 years and also keeping in view the incident being of 1980-1981, this Court thinks it proper to reduce the sentence to the period already undergone which comes to about 15 days as it would not be in the interest of justice to again send him to jail at the fag end of his life journey. Order accordingly

7. Since applicant Awadh Ram Sahu died during the pendency of this revision, no order as regards the sentence to be imposed on him is required to be passed by this Court.

8. In the result, the revision is allowed in part with the observations made above.

Sd/-

(Vimla Singh Kapoor)
Judge