

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 363 of 2013

Neetu Dubey

Applicant

Versus

State of Chhattisgarh

Respondents

Post for pronouncement of the order on 20.09.2019

Sd/-

JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 22.07.2019****Order Delivered on : 20 /09 /2019****CRR No. 363 of 2013**

- Smt. Neetu Dubey W/o Wd/o Umashankar Dubey Aged About 45 Years R/o 27 Kholi , Bilaspur , P.S. Civil Line , Bilaspur , Tahsil And Distt. Bilaspur C.G.

---- Petitioner**Versus**

- State Of Chhattisgarh S/o Through - District Magistrate, Bilaspur C.G.

---- Respondent

For Applicant	: Shri Ratnesh Kumar Agrawal, Advocate
For Respondent/State	: Shri Rahul Mishra, Dy.GA

C A V Order**20/09/2019**

Present revision arises out of the impugned order of conviction and sentence dated 13.06.2013 passed by the Third Additional Sessions Judge, Bilaspur in Cr.A. No. 105/2013 whereby the learned appellate court below has affirmed the conviction and sentence passed by the Chief Judicial Magistrate, Bilaspur in Cr. Case No. 3529/2010 vide order dated 05.03.2013 for the offence under Section 420 IPC and sentenced to undergo RI for six months and to pay fine of Rs. 500/- with default stipulation.

2. Brief facts of the case are that on 12.06.08, complainant gave Rs. 1,10,000/- to the applicant/accused on the assurance that she will provide him job in the department of Chhattisgarh State Electricity

Board. After a period of two months, when the complainant did not get any order of appointment from the concerned department he made a complaint through video conferencing before the Collector, Bilaspur and on enquiry, offence has been registered against the present applicant under Section 420 IPC. After completion of investigation charge sheet was filed and charges were framed against her.

3. So as to prove the guilt of the accused/applicant, prosecution has examined 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 Cr.P.C. in which she denied the charges levelled against her and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned order of conviction and sentence dated 05.03.13, learned Chief Judicial Magistrate has convicted the accused/applicant under Section 420 IPC and sentenced him to undergo RI for six months and fine of Rs. 500/- with default stipulation. This order was appealed by the applicant and in the appeal, learned appellate court has affirmed the conviction and sentence of the applicant. Hence the present revision.

5. Counsel for the applicant submits that the impugned order of conviction and sentence are perverse, erroneous, illegal and contrary to the facts and evidence on record. Learned court below has failed to observe that the prosecution has failed to prove that the applicant is in a position to induce the complainant to deliver the questioned amount. Both the courts below have failed to appreciate that there are material contradictions and omissions in the version of the prosecution witnesses which creates doubt on the prosecution story. There is no

documentary evidence available on record and despite that, the courts below had convicted the applicant and therefore the conviction and sentence imposed on the applicant are liable to be set aside.

6. On the other hand, State counsel supports the impugned order and submits that the same is in accordance with law.

7. After giving full consideration to the submissions raised on behalf of the parties by their counsel, perused the judgments rendered by the CJM and the ASJ and the material on record in its entirety.

8. Laxmikant Tiwari PW-1 in his statement has stated that he gave Rs. 1,10,000/- on being demanded by the applicant in the name of providing job of peon in the Chhattisgarh State Electricity Board. He has stated that she gave assurance that within two months he will get the job and when after two months, he did not get any job, he demanded the amount from the applicant which was not returned to him. He gave a written complaint to the Collector (Ex.P-1). Dinesh Prasad Tiwari PW-2 is the relative of PW-1. He has stated that he was informed by father of Laxmikant that he will be getting employed in CG Electricity Board and he came to Bilaspur to pay the amount to the applicant. Anuj Ram (PW-3) is the neighbour of PW-1 has stated that the complainant gave Rs. 1,10,000/- to the applicant he is also a witness to the same. Shiv Kumar Tiwari (PW-4) has also stated that the complainant gave Rs. 1,10,000/- to the applicant for providing job of peon in the CG Electricity Board. A.K.Sharma (PW-5) is the Investigating Officer who has done the investigation.

9. Applicant's defence is that her daughter was married to

complainant's uncle Tula Ram and her daughter lodged FIR under Section 498-A IPC against Tularam therefore complainant and his family members malafidely lodged a false complaint against her and stated that false allegations and report has been lodged against her. The father of the complainant Shiv Kumar Tiwari (PW-4) has stated in his cross-examination that he used to beg and earn his livelihood. It is true that his brother in-law Tula Ram is married to the daughter of accused/applicant and it is also true that FIR was filed against his brother-in-law under Section 498-A IPC. Complainant Laxmikant Tiwari has also admitted in his cross-examination about the fact that the applicant is not holding any government post nor is in service.

10. Complainant has filed complaint against the accused after two years i.e. on 11.11.2010 and the incident was of the year 2008 and there is no sufficient reason for delay in lodging the FIR. It is well settled principle of law in criminal jurisprudence that the prosecution has to prove the case beyond reasonable doubt and the defence has shown all its probability. Applicant in her defence has stated that uncle of the complainant was married to his daughter and in the year 2004, report was lodged against the uncle therefore in the year 2008, a false complaint of demand of Rs. 1,10,000/- in name of providing job in government department by the applicant has been made which is unbelievable and not trustworthy. The prosecution was not able to prove its case beyond reasonable doubt. Accordingly, the revision is allowed. Applicant is acquitted of the charges under Section 420 IPC.

Sd/-
(Rajani Dubey)
Judge