

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.856 of 2013

Order Reserved on : 11.7.2019

Order Passed on : 26.9.2019

Gannulal Dewangan, S/o Shri Kejuram Dewangan, aged about 56 years, R/o at post Jurripara, Balod, Police Station and Tahsil Balod, Civil and Revenue District Balod, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate Balod, Police Station Balod, District Balod, Chhattisgarh

--- Respondent

and

Criminal Revision No.859 of 2013

Arun Kumar, S/o Shivkumar, aged about 62 (at present 65) years, R/o Nayapara, Balod, Police Station and Tahsil Balod, Civil and Revenue District Balod, Chhattisgarh

---- Applicant

versus

The State of Chhattisgarh through the District Magistrate Balod, Police Station Balod, Civil and Revenue District Balod, Chhattisgarh

--- Respondent

For Applicant Gannulal Dewangan	: Shri R.S. Patel, Advocate
For Applicant Arun Kumar	: Shri Amit Kumar Sahu, Advocate on behalf of Shri Aditya Kumar, Advocate
For Respondent/State	: Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. Since both the revisions arise out of a common judgment, they are decided together by this common order.

2. Both the revisions arise out of the judgment dated 17.12.2013 passed by the Sessions Judge, Balod in Criminal Appeal No.77 of 2013 preferred by Gannulal Dewangan and Criminal Appeal No.78 of 2013 preferred by Arun Kumar. The appeals were preferred before the Court of Session against the judgment dated 30.6.2011 passed by the Judicial Magistrate First Class, Balod in Criminal Case No.110 of 2009. By the impugned judgment dated 17.12.2013, the Appellate Court convicted and sentenced the Applicants as under:

<u>Applicant</u>	<u>Conviction</u>	<u>Sentence</u>
Gannulal Dewangan	Under Section 409 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 465 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 467 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 468 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 471 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

	Under Section 420 read with Section 120B of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
Arun Kumar	Under Section 409 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 465 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 467 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 468 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 471 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation
	Under Section 420 of the Indian Penal Code	Rigorous Imprisonment for 1 year and fine of Rs.500/- with default stipulation

3. Facts of the case, in brief, are that on the relevant date, Applicant Arun Kumar was working at Jhalmala Vitaran Kendra of the erstwhile Madhya Pradesh Electricity Board as Assistant Grade-III and his duty was to collect amount of electricity bills. On the relevant date, Applicant Gannulal Dewangan was also working as Assistant Grade-III in the same office and his duty was to maintain computerised ledgers. As per the prosecution story, a forged electricity bill (Article 60) for Rs.11,718/- was allegedly generated by the Applicants in the name a consumer Baliram (died) in which Applicant Gannulal Dewangan had written name of Baliram in his

own handwriting. It is further alleged that Applicant Arun Kumar collected the whole amount of Rs.11,718/- from Baliram and against the collection issued a counter slip (Article 4) which was only for a sum of Rs.24/-. At Serial No.35 of register, namely, Classified Abstract of Collection (CAC), Applicant Arun Kumar made entry of collection of Rs.24/- only. On 24.6.1996, Tarachand, son of Baliram, went to Junior Engineer Atmaram Bunker (PW2) and submitted before him the forged electricity bill and counter slip and made a request for inquiry. An inquiry was conducted by Executive Engineer. After inquiry, the Executive Engineer found both the Applicants and Auditor Rajesh Singh (co-accused) guilty. The Executive Engineer also gave a notice to the Applicants and Rajesh Singh to deposit the embezzled amount of Rs.11,718/-. Each of them deposited a sum of Rs.3,900/- on 25.6.1996. Thereafter, Junior Engineer Atmaram Bunker (PW2) submitted a written report (Ex.P3) in police station on the basis of which the offence was registered and during the course of investigation, relevant documents were seized. The seized documents were sent to the handwriting expert for examination. Opinion of the handwriting expert is Ex.P6 and the reason for the opinion is Ex.P7. As opined by the expert, in the electricity bill (Article 60), name of Baliram was manually written by Applicant Gannulal Dewangan and the entries were made in the counter slip (Article 4) and in the CAC register (Article 5) by Applicant Arun Kumar. On completion of the investigation, a charge-sheet was filed.

4. After trial, the Trial Court acquitted co-accused Rajesh Singh of all the charges framed against him, but convicted both the Applicants

for offence punishable under Sections 409, 465, 467, 468, 471, 420 and 120B of the Indian Penal Code and sentenced each of them with rigorous imprisonment for 3 years, 1 year, 3 years, 3 years, 1 year, 3 years and 1 year, respectively and with fine. Against the judgment of the Trial Court, the present Applicants preferred separate appeals before the Court of Session. Vide the impugned judgment dated 17.12.2013, the Appellate Court convicted and sentenced both the Applicants as mentioned in the second paragraph of this order. Hence, these revisions by the Applicants.

5. Learned Counsel appearing for the respective Applicants submitted that without there being any evidence on record, the Courts below have wrongly convicted the Applicants. It was further submitted that both Tarachand, son of consumer Baliram and Baliram were not examined before the Trial Court by the prosecution. Therefore, the amount of Rs.11,718/- was deposited or entrusted to any of the present Applicants by Baliram or by his son Tarachand is not established. Hence, no offence is made out against any of the Applicants. It was further submitted that the conviction is based only upon the statement of the handwriting expert Dr. P.C. Trivedi (PW8), which is a very weak type of evidence. Without there being any corroborative evidence, the conviction cannot be based only on the opinion of the handwriting expert. It was further submitted that as per the opinion of the handwriting expert, only the name of Baliram was written by hand and rest of the entries made in the electricity bill were not written in any handwriting. Therefore, it cannot be said that the alleged electricity bill was prepared by Applicant Gannulal Dewangan.

Applicant Arun Kumar made entry in the CAC register (Article 5) on the basis of the counter slip (Article 4) which was issued for Rs.24/-. The prosecution has failed to establish that any bill for Rs.24/- was issued against Baliram. Thus, the finding of the Courts below is perverse and not in accordance with the evidence available on record.

6. Learned Counsel appearing for the State/Respondent supported the impugned judgment of conviction and sentence.
7. I have heard Learned Counsel appearing for the parties and perused the records with due care.
8. While dealing with the case under Section 409 of the Indian Penal Code, the most essential ingredient is entrustment of the property to the accused. Apart from entrustment of the property, it should also be proved that the property was dishonestly misappropriated. If the prosecution fails to prove entrustment of the property then the entire case of the prosecution goes.
9. In the instant case, there is no direct evidence of entrustment of the bill amount to any of the accused persons. Allegedly, the bill amount of Rs.11,718/- was generated by Applicant Gannulal Dewangan which was deposited also by Baliram. But, counter slip against the said deposit was issued for Rs.24/- only and entry in the CAC register was also made for Rs.24/- only. In the present case, neither Baliram has been examined nor his son Tarachand. Therefore, it is not established that the bill amount of Rs.11,718/- was entrusted or not. Both the Courts below have arrived at the

finding only on the ground that since the counter slip was issued for Rs.24/- only and on the direction of the Executive Engineer the accused persons had deposited a sum of Rs.3,900/- each against the embezzled amount of Rs.11,718/-, the bill amount of Rs.11,718/- was entrusted. But, both the Courts below have ignored the fact that the counter slip was for Rs.24/- only and the entry in the CAC register was also for Rs.24/- only. Therefore, in these circumstances, when the counter slip was issued for Rs.24/- and entry in respect thereof in the CAC register was also for Rs.24/- only, amount of Rs.11,718/- was entrusted by Baliram is not acceptable. If it had actually happened, Baliram would have raised an objection while receiving the counter slip of Rs.24/- against entrustment of Rs.11,718/-. Therefore, there is no direct or indirect evidence available on record to establish that amount of Rs.11,718/- was entrusted by Baliram. Mere from deposit of Rs.3,900/- each by the three accused persons on the direction of the Executive Engineer, it cannot be presumed that they admitted the guilt of embezzlement. As per the statement of handwriting expert Dr. P.C. Trivedi (PW8) and his opinion (Ex.P6 and P7), in the alleged forged bill (Article 60) only the name of Baliram was found to be manually written by Applicant Gannulal Dewangan and rest of the contents of the bill are computer generated. Even if this fact is considered to be true, it is not established that the said bill (Article 60) was generated or prepared by any of the Applicants. In what circumstances and why name of Baliram was manually written by Applicant Gannulal Dewangan has not been established by the prosecution. The prosecution has also not been able to connect that from where and in what manner the alleged bill (Article 60) was generated. Even if the bill (Article 60) is

considered to be a forged bill, this bill was generated or prepared by any of the Applicants is not established beyond reasonable doubt. Therefore, considering the entire evidence available on record, the findings of the Courts below do not appear to be in accordance with the evidence available on record. Hence, no offence is made out against any of the Applicants.

- 10.** Consequently, both the revisions are allowed. The impugned judgment of conviction and sentence is set aside. The Applicants are acquitted of the charges framed against them.
- 11.** 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