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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.796 of 2018

Order Reserved on : 11.1.2019

Order Passed on : 3.4.2019

Smt. Rebika (Rabika) Masih, W/o Kundan Masih, aged about 54 years, R/o Mouhadih Mission Compound, Police Station Birra, District Janjgir-Champa, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, Janjgir, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Applicant	:	Shri H.V. Sharma, Advocate
For Respondent	:	Smt. Smita Ghai, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred against the judgment dated 12.7.2018 passed by the Sessions Judge, Janjgir-Champa in Criminal Appeal No.36 of 2018, whereby the Sessions Judge has rejected the appeal and affirmed the judgment dated 25.5.2018 passed by the Judicial Magistrate First Class, Champa in Criminal Case No.366 of 2012 convicting the Applicant under Section 420 of the Indian Penal Code and sentencing her with simple imprisonment for 2 years and with fine of Rs.2,000/- with default stipulation.
2. Applicant Smt. Rebika Masih is *Bua* of Complainant Marvin Masih (PW1). She has been prosecuted for an offence punishable under Section 420/34 of the Indian Penal Code. It is alleged that she along with her husband Kundan Masih made a demand of

Rs.1,25,000/- from the Complainant for securing a job for him in Sales-Tax Department. The Complainant arranged and gave cash of Rs.75,000/- to the Applicant and also gave her ornaments of his wife to mortgage and get the remaining amount. It is further case of the prosecution that the Applicant could not provide a job for the Complainant and also dishonestly denied to refund the amount and the ornaments. A written complaint (Ex.P1) was filed by the Complainant. On the basis of the complaint, an offence was registered. On completion of the investigation, a charge-sheet was filed under Section 420/34 of the Indian Penal Code before the Trial Court against the Applicant as well as her husband Kundan Masih. Charges were framed. As many as 7 witnesses were examined by the prosecution. After trial, the Trial Court convicted the Applicant as well as her husband Kundan Masih for the offence punishable under Section 420/34 of the Indian Penal Code. In appeal, the Appellate Court, vide the impugned judgment dated 12.7.2018, allowed the appeal of Kundan Masih and acquitted him of the charge framed against him, but dismissed the appeal of the Applicant and affirmed the conviction and sentence imposed upon her.

3. Shri H.V. Sharma, Learned Counsel appearing for the Applicant submitted that both the Courts below have failed to appreciate the evidence on record and wrongly relied upon the witnesses who contradicted their material piece of earlier statements. There are material contradictions and omissions in the statements of the witnesses. It was further submitted that the conviction and sentence imposed upon the Applicant is based on the findings contrary to the evidence on record. Therefore, the judgment of

conviction and sentence passed by the Courts below against the Applicant are liable to be set aside.

4. Smt. Smita Ghai, Learned Panel Lawyer appearing for the State/Respondent supported the impugned judgment.
5. I have heard Learned Counsel appearing for the parties and perused the records of the Courts below with due care.
6. Cheating is defined in Section 415 of the Indian Penal Code, which reads thus:

“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.”

7. Punishment for Cheating is provided in Section 420 of the Indian Penal Code, which runs as follows:

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. A bare reading of the above provisions of the Indian Penal Code makes it clear that 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". In the light of above provision, I shall examine the facts and evidence of the present case.
9. It has been mentioned above that Complainant Marvin Masih (PW1) is a nephew of the Applicant. In his Court statement, Marvin Masih (PW1) has categorically stated that on 18.9.2010, the Applicant telephonically informed him that she has acquaintances in the Sales-Tax Department and she shall get him appointed on a post of driver in that department and for which an amount of Rs.1,25,000/- shall be required. He has further deposed that the Applicant was continuously calling him telephonically with an interval of about 1-2 hours. When he told that he does not have cash and has only ornaments of his wife, the Applicant called him with the ornaments saying that by mortgaging those ornaments they will give cash of Rs.50,000/- to the mediator and remaining amount will be given to the mediator later on. On being asked by the Applicant, he gave her the old ornaments of his wife. The above statement of this witness has been duly corroborated by his wife Rut Masih (PW2). Marvin Masih (PW1) has further deposed that thereafter in the month of December, he again gave cash of Rs.60,000/- to the Applicant in her house in front of Robin

Vishwash (PW3). Marvin Masih has also stated that he gave the said cash of Rs.60,000/- to the Applicant after taking the same from Chandra Prakash Singh (PW4). Both Chandra Prakash Singh (PW4) and Robin Vishwash (PW3) have duly corroborated the statement of Marvin Masih (PW1). Chandra Prakash Singh (PW4) has categorically stated that Marvin Masih (PW1), saying him that he is going to be appointed in the Sales-Tax Department, had taken the amount of Rs.60,000/- from him. Chandra Prakash Singh has also stated that after giving the amount of Rs.60,000/- to Marvin Masih, he had also sent Robin Vishwash (PW3) along with Marvin Masih (PW1) to the Applicant for giving the money to the Applicant. Robin Vishwash (PW3) has also corroborated the above statements of both Marvin Masih (PW1) and Chandra Prakash Singh (PW4) and has stated that in his presence the amount of Rs.60,000/- was given by Marvin Masih (PW1) to the Applicant in the month of December. Marvin Masih (PW1) has further stated that even thereafter his appointment order was not given to him. On this, he talked to Kundan Masih, husband of the Applicant. Kundan Masih told him that further amount of Rs.15,000/- will be required for the purpose. Then he took a sum of Rs.15,000/- from Robin Vishwash (PW3) and gave the same to the Applicant in presence of Robin Vishwash (PW3). This statement is also duly corroborated by Robin Vishwas (PW3).

10. From the above statements of the witnesses, it is clear that the Applicant had allured the Complainant for getting him appointed as a driver in the Sales-Tax Department. On being allured by the Applicant, the Complainant had given her ornaments of his wife amounting to Rs.50,000/- and cash of Rs.60,000/- and thereafter

again cash of Rs.15,000/-. But, the Applicant did not get the Complainant appointed as a driver nor did the Complainant get his money back. Though there are some contradictions and omissions occurred in the statements of the above witnesses, it is noticeable that their statements were recorded in the Court after 6 years of the incident. Therefore, the contradictions and omissions occurred in their statements are natural. From the evidence adduced by the prosecution, it is well established that Marvin Masih (PW1) is real nephew of the Applicant. There is nothing on record to show that there was any previous enmity between the Applicant and the Complainant. Therefore, there is no possibility of false implication of the Applicant by the Complainant. The statement of Complainant Marvin Masih (PW1) is duly corroborated by Robin Vishwash (PW3) and Chandra Prakash Singh (PW4), who are independent witnesses. Therefore, considering the facts and circumstances of the case and the evidence adduced by the prosecution, I find that the finding of conviction of the Applicant arrived at by the Courts below is in accordance with the evidence on record. Thus, both the Courts below have rightly convicted the Applicant for the offence under Section 420 of the Indian Penal Code.

11. As regards the sentence, considering the fact that the Applicant is a woman and is also a government employee and she is real *Bua* of the Complainant and also considering that she has already undergone about 3 weeks during pendency of this revision, she has no known previous antecedent, she is facing the *lis* since 2012, I am of the view that it would be in the interest of justice if her sentence is restricted to the period already undergone by her

and the fine imposed upon her is enhanced from Rs.2,000/- to Rs.2,00,000/-. Ordered accordingly. The amount of fine of Rs.2,00,000/- shall be deposited by her before the Trial Court within one month from today. If any amount has already been paid towards fine, the same shall be adjusted in the amount of fine enhanced today. In case of default of payment of fine, the Applicant shall be liable to undergo additional simple imprisonment for six months. On making deposit of the fine, the entire amount of Rs.2,00,000/- shall be paid to Complainant Marvin Masih (PW1) as a compensation under Section 357 of the Code of Criminal Procedure.

12. Consequently, the revision is allowed in part to the extent indicated above.
13. 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