

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :23/10/2019

Order passed on : 19/11/2019

CRR No. 35 of 2013

- Khetro Mohan Yadav S/o Shri Purnuram, Aged About 52 Years, R/o Darbari Toli Ward No.11, Jashpur C.G. Permanent R/o Village Diwanpur, Post Diwanpur, Police Station Patthalgaon, Distt. Jashpur C.G., Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, through The District Magistrate, Dhamtari, District - Dhamtari C.G. , Chhattisgarh

----Respondent

For Applicant – Shri U.K. Sharma, Sr. Advocate with Shri V.K. Pandey, Advocate.

For Non-applicant/State – Shri Jitendra Shukla, Panel Lawyer.

Shri Pankaj Agrawal, Advocate on behalf of Chief Municipal Officer, Dhamtari.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

19-11-2019

1. This revision is directed against the judgment of Additional Sessions Judge Dhamtari Chhattisgarh in Criminal Appeal No.171/2012 dated 19-12-2012 by which the conviction against the applicant under section 420, 409 and 120B of the IPC was upheld as well as sentences imposed upon him for the said offences has also been upheld.
2. The case of the prosecution was this that the applicant/petitioner was working as Accountant in Municipal Council Dhamtari. It is alleged that on 30-07-2011 this applicant prepared one cheque of Rs.1,46,449/- for payment to contractor Yogesh Soni and he prepared another cheque of value Rs. 77,248/- for another contractor Prakash Pawar. It is further alleged that he got the cheques signed by the Incharge C.M.O., Municipal Council Dhamtari who is co-accused D.K. Sinha, who had connived the preparation of this cheque and also obtained signature of

Chairman, Municipal Council Dhamtari. The withdrawals were made on the basis of these cheques in a fraudulent manner. Subsequently when the petitioner was transferred and one Devesh Chandel was posted as In-charge Accountant, then he found the defalcation in the municipal records as there had been no record of proceeding regarding preparation of said cheques for payment to the said contractors. On the basis of report so given an enquiry was made in which the applicant made correspondence to Chief Municipal Officer vide Ex.-P/1C in which he made admission that he had prepared the cheques and obtained the signatures of the persons authorized and thereafter he had made withdrawal of the cheque amount himself and misappropriated the same. The Chief Municipal Officer then sent a written complaint vide Ex.-P/4 to the Police Station City Kotwali Dhamtari, on the basis of which FIR Ex.-P/21 was lodged. While conducting the investigation the police concluded that co-accused persons namely Prakash Soni and D.K.Sinha have also collaborated, connived and conspired in the commission of the offences. Hence, all of them were chargesheeted.

3. The trial Court framed charges under Section 420, 409, 120B against this applicant and co-accused D.K. Sinha and charges under Section 420 read with section 120B of the PC against co-accused Prakash Soni. After completion of the trial all the accused were convicted and sentenced for the offences charged against them.
4. The applicant and the co-accused preferred appeal before the Sessions Court in which co-accused D.K. Sinha was acquitted of the charges against him and his appeal was allowed. However, the appeal of the applicant/petitioner was dismissed by upholding conviction and sentence against him.

5. It is submitted on behalf of the applicant/petitioner that the applicant was simply a clerk in the establishment of the Municipal Council Dhamtari, who was working on the instructions given by the superior authorities. The petitioner/applicant himself was not authority to draw the cheques, therefore, the whole responsibility can be fixed only upon the President of the Municipal Council and the Chief Municipal Officer who was a co-accused D.K. Sinha. It is further submitted that the appellate Court has acquitted the co-accused D.K. Sinha, therefore, this applicant was also entitled for acquittal on the same ground. The conviction of the applicant is based on the document Ex.-P/1C which is not sustainable as an incriminating statement made by any person, cannot be made admissible in evidence. The confessional statement of the applicant was taken by the municipal officers by putting him under pressure. It is also submitted that the cheques in question were sent back by the banks for resigning and the applicant was not present at that time, therefore, he cannot be held responsible and only the President and the CMO of the Municipal Council can be held responsible for the said defalcation. Therefore, the conviction of the applicant is bad in law and he is entitled for acquittal. In the alternative it is argued that the applicant has moved an application for compromise before the Chief Municipal Officer Dhamtari, which is pending for consideration and that the applicant has also made deposit of all the amount which is alleged to have been defalcated by him. Therefore, looking to the initiation of this compromise proceedings no case is now left against the applicant, hence, this is another ground on which this petition deserves to be allowed.

Reliance has been placed on the judgment of M.P. High Court in the matter of **Mukutrao Deshmukh Vs. State of M.P.**, 1981 1 MPWN

59 in which it was held that in that case of offence under Section 408 of the IPC the full amount was deposited and the trial was pending for number of years, therefore, the High Court Exercised power under Section 482 of the Cr.P.C. quashing the criminal proceeding.

Reliance has also also been placed on the judgment of Hon'ble the Supreme Court in the matter of **Om Prakash Vs. State of Haryana**, AIR 1980 SC 476. It is submitted that the applicant was a clerk who was working as In-charge Accountant at the time the alleged offence has been committed, therefore, he cannot be held responsible for the same. Similarly relying upon the judgment of Allahabad High Court in the matter of **State of U.P. Vs. Ganga Sashai Saxena and another**, 2004 (2) Crimes 93 it is submitted that the prosecution was required to prove the case against the applicant by presenting each and every documents on the basis of which the said fraudulent withdrawal was made, which has not been made accordingly. Hence, in this case the applicant deserves to be acquitted.

It is further submitted that Chairman of Municipal Council has powers under the Municipalities Act to compromise and give reliefs to the accused person, regarding which there is specific rule in C.G. Municipalities (Compounding of Offences) Rules, 1963 in which the procedure is laid down, therefore the applicant is entitled for relief.

6. Learned counsel for the State/respondent opposes and submits that the prosecution has made out a very strong case of conviction against the applicant. The Grounds raised in this revision are without any basis because there is evidence to show that the cheques though signed by the Chairman and CMO of Municipal Council, were withdrawn by the applicant himself in his personal account in Jashpur and not in the accounts of the persons for whom the cheques were drawn. Further, the

applicant has very clearly made a confessional statement to the Municipal authority which is admissible evidence. The grounds raised that the co-accused D.K. Sinha was acquitted by the appellate Court are these that this applicant by his confessional statement made admission of all the guilt himself and that was a reason that the co-accused was acquitted, hence, the applicant does not get any benefit of this ground of acquittal in favour of the co-accused. The evidence of the prosecution is very clear and cogent against the applicant. The submission made that the cheques were resubmitted for signature of the Municipal authorities is without any basis as there is no such evidence that the cheques were resubmitted.

It is also submitted that the applicant has moved an application for compounding of the offence before the Municipal authority on which there is no conclusion drawn and further there is no such authority of the Municipal Council to compound the offence, hence, the petition is without any substance which may be dismissed.

7. On behalf of the Municipal Council Dhamtari, it is submitted that the simply by making deposit of defalcated amount the applicant does not get absolved from the criminal liability against him. The Municipal Council has not taken any decision on the compromise in the case against the applicant. Hence, the petition be dismissed.
8. Finding of conviction has been given against the applicant concurrently by the two Courts below on the basis of the evidence brought by the prosecution. Therefore, there does not appear to be any reason to re-appreciate the evidence of the witnesses. The ground raised that the applicant was simply following the instructions of his authorities needs discussion.
9. On this behalf Ashok Kumar Dwivedi (PW-1) has stated that when

defalcation was disclosed and reported by In-charge Accountant Devesh Chandel, the applicant was questioned who could not give any satisfactory explanation. Thereafter, it was also found that there was no record of proceeding regarding drawing of the cheques which had been drawn and subsequent to that the applicant has made confessional statement vide Ex.-P/1, true copy of which Ex.-P/1C is present on record. In cross-examination his statement has not found any challenge and it has been denied that the confessional statement was taken from the applicant by putting him under pressure.

10. Prakash Pawar (PW-2) has stated that he did not receive any payment on the basis of the cheque drawn in question as he had already received the payment. Similarly is the statement of Yogesh Soni (PW-3), another contractor that he did not receive any payment on the basis of cheque in question and he came to know that the cheques were withdrawn in Jashpur.
11. Devesh Chandel (PW-5) is In-charge Accountant who succeeded the applicant, he has stated about the discovery made by him regarding defalcation and his statement has remained unchallenged and unrebutted in cross-examination. Shivshankar Singh (PW-9) was Branch Manager of Bank of Baroda, has stated about seizure of cheques in question. He has stated that withdrawal were made in Jashpur Branch. There is no statement made by him that the cheques were sent to Municipal authorities for repeat signature.
12. ASI, Satyendra Singh (PW-12) has investigated the case. Pramod Kumar Tiwari (PW-13) is Deputy Manager of S.B.I. Jashpur Branch who has stated about the deposits made in the account of one Prakash Soni in the form of two cheques. Further, there is evidence of handwriting expert in support of the prosecution case.

13. There is no dispute that the cheques were drawn and signed by the authorities. There is also no dispute that at the time when the disputed cheques were signed this petitioner was working as In-charge Accountant and it was within his duty to prepare the cheques and produce the same before the authorities for signing of the same. The evidence that has been brought very clearly shows that there had been no record of proceedings for preparation and drawal of the cheques in question. It was burden of the applicant to bring in evidence regarding such proceeding to show his bonafidy, but no such claim has been made on his behalf. Another important thing established is this, that the persons who are shown to be beneficiaries of these cheques have very clearly denied benefit of these cheques in their favour, which is unrebutted. Thirdly, withdrawal of the cheques were made in Jashpur which is another circumstance which was needed to be explained by the applicant himself. But, he has made no effort to explain the same and lastly, there is confessional statement of the applicant himself by Ex.-P/1 copy of which is Ex.-P/1C. There is value of such confessional statement for the reason that the confessional statement was not made by the applicant in presence of police official, on the contrary he made such statement in his own handwriting to the Chief Municipal Officer, regarding which there is no restriction under the provisions of the Evidence Act for making such evidence admissible.
14. Another ground raised that the applicant should have been acquitted on the similar ground on which co-accused D.K. Sinha was acquitted by the appellate Court is also not admissible simply for the reason that the co-accused D.K. Sinha has been acquitted because the appellate Court believed in the confessional statement made by the applicant by which the co-accused was absolved from the penal liability, hence, this

submission has no force.

15. Lastly, the ground raised that the applicant intends to compromise and he has moved an application before the Municipal authorities is also not acceptable ground for the reason that the Municipal Council has clearly made contrary statement that no such decision has been taken by the Municipal Council. Hence, only for the reason that the applicant is expecting a compromise he cannot be found entitled for any relief. Hence, after over all consideration, I am of this view that this revision petition is without any substance which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil