

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 418 of 2013**

- Rajkumar Yadav S/o Krishna Kumar, aged about 28 years, R/o Pandari, Post Gejpur, Police Station- Surajpur, Civil District- Surguja, Revenue District- Surajpur (C.G.)

---- Applicant**Versus**

- State of Chhattisgarh, through Station House Officer, Police Station Patna District Korea (C.G.)

---- Respondent

For Appellant	:	Shri Anil Gulati, Advocate
For Respondent/State	:	Shri Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****05.08.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 06.07.2013 passed by the Additional Sessions Judge, (FTC) Baikunthpur, District- Korea C.G., in Criminal Appeal No. 139/2012 whereby, the learned Appellate Court below has confirmed the conviction and modified the sentence of the accused/applicant as awarded by the learned Chief Judicial Magistrate Baikunthpur, vide its judgment dated 18.12.2012 in Criminal Case No. 317/2011 for the offence under Section 407 of IPC. The sentence of the accused/applicant has modified by the Appellate Court as described below :-

Conviction	Sentence
Under Section 407 read with Section 511 of IPC.	R.I. for 1 year and fine of Rs. 5,000/- with default stipulation.

2. Brief facts of the case are that, the contract was signed between the vehicles' driver and the S.E.C.L. Katkona Colliery to load the coal

from the site of S.E.C.L. Kotkona Colliery. The allegation against the applicant is that on 07.03.2011, the applicant after loading 11 tonne coal in the vehicle bearing registration No. C.G. 15-A/8029, tried to ran away from the coal side without taking slip and he was caught by the security guard at a distance of 5 k.m. away from the coal mines. Based on this, FIR was registered against the applicant/accused. After investigation, charge-sheet was filed and charge was framed against the applicant/accused under Section 407 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 7 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 18.12.12, learned Chief Judicial Magistrate has convicted the applicant for the offence punishable under Section 407 of IPC and sentenced the applicant to undergo R.I. for 2 years with fine of Rs. 5,000/- with default stipulation. This order was appealed by the applicant and in the appeal, the learned Appellate Court while maintaining the conviction, has modified the sentence of the applicant as described above. Hence, the present revision.

5. Counsel for the applicant submits that the judgment of conviction passed by both the Courts below is bad in law. Both the learned Courts below have failed to appreciate that there are major contradictions and omissions in the statement of prosecution witnesses. He further submits that learned Courts below failed to appreciate that there were two ways to go to the site where coal had to be dumped by the applicant. One way goes towards the Khadipur and another towards the Ghat and, the applicant was in the way of Khadipara, which goes to the site where the coal had to be dumped. The applicant was performing his duty with utmost sincerity, in spite of that, the applicant has been implicated in the present case with the malafide intention. He further submitted that according to him, the incident is said to have

taken place in the year 2011 and thereby more than 8 years have rolled by since then. He is aged about 40 years. The applicant has already remained in jail for about one month, and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate, if the sentence imposed upon him may be reduced to the period already undergone by him.

6. On the other hand, learned counsel for the State supporting the impugned judgment and submits that the trial Court Was justified in convicting and sentencing the applicant on the crime in question.

7. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

8. Having gone through the material available on record and the evidence of the witnesses including Parmanand Ratre (PW-1), Panna Lal (PW-2), Sunil Chaurasiya (PW-3), Ramakant Thakur (PW-4), R.S. Maravi (PW-5), Ram Chandra (PW-6), Dhananjay Singh (PW-7), established the involvement of the accused/applicant in the crime in question beyond reasonable doubt that the applicant was caught red handed. This Court does not find any illegality in the findings recorded by the Court below as regard the conviction of applicant under Section 407 read with Section 511 of IPC.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2011, and further that the appellant had already remained in jail for one month, therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicant under Section 407 read with Section 511 of IPC, he is sentenced to the period already undergone by him.

11. The revision petition is accordingly partly allowed.

Sd/-
(Rajani Dubey)
JUDGE

