

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 145 of 2015**

- Ashok Verma

**---- Applicant**

**Versus**

- State Of Chhattisgarh

**---- Respondent**

**CRR No. 136 of 2015**

- Horilal Sen

**---- Applicant**

**Versus**

- State Of Chhattisgarh

**---- Respondent**

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**Post for pronouncement of the order on 30.07.2019**

**Sd/-**

**JUDGE**

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment reserved on : 09.07.2019****Judgment delivered on : 30.07.2019****CRR No. 145 of 2015**

- Ashok Verma S/o B.R. Verma Aged About 52 Years R/o Irrara, Police Station Bhakhara, Civil And Revenue District Dhamtari C.G.

**---- Applicant****Versus**

- State Of Chhattisgarh S/o Through Station House Officer, Police Station Charama, Civil And Revenue District North Bastar, Kanker C.G.

**---- Respondent****CRR No. 136 of 2015**

- Horilal Sen S/o Suklal Sen Aged About 65 Years R/o Village Jaisakarra Ps Charama, Rev. And Civil Distt. North Bastar, Kanker C.G.

**---- Applicant****Versus**

- State Of Chhattisgarh S/o Through The Ps Charama District North Bastar Kanker C.G.

**---- Respondent**


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| For Applicants       | : Shri D.K.Gwalre and Shri P.K.Tulsyan, |
|                      | counsel for the respective parties.     |
| For Respondent/State | : Shri Priyank Rathi, PL                |

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**Hon'ble Smt. Justice Rajani Dubey****C A V Order****30/07/2019**

As both the revisions are arising from the same judgment and

order dated 13.02.2015, they are being disposed of by this common order.

These revisions under Section 397/401 of Cr.P.C. arise out of the impugned judgment of conviction and order of sentence dated 13.02.15 passed by the learned Additional Sessions Judge, North Bastar, Kanker in Cr.A. No. 02/2015 whereby the learned appellate court below has confirmed the conviction and sentence of the applicants as awarded by the learned Chief Judicial Magistrate, Kanker vide its judgment dated 15.01.2015 passed in Criminal Case No. 616/2010 for the offences under Sections 409/34 and 414 of IPC and sentenced them to undergo RI for four years and 3 years respectively, with fine of Rs. 5,000/- on each count, plus default stipulations.

2. Brief facts of the case are that applicant Ashok Verma is a public servant posted as Sub-engineer in the Water Resources department and was site Incharge of the stop dam which was being constructed at Bodi. On 21.06.2010, for construction of said dam, 680 bags of cement were to be transported to the site but instead of transporting the cement bags to the site, the applicant had kept them in the house of applicant Horilal (Cr.Rev. No. 136/15) and committed forgery and misappropriation by selling 50 cement bags to one Gwal Singh. Applicant Ashok Verma along with accused Hori Lal, who was his partner has thus, committed criminal breach of trust by keeping the entrusted public property, while in the capacity of public servant. The DEO Shyam Sundar Pisda, gave a written complainant to PS Charama district Kanker. FIR was lodged against the applicants. After

completion of investigation, charge sheet was filed against the applicants and accordingly charges were framed under Sections 409 and 414/34 IPC.

3. So as to prove guilt of the accused/applicants, prosecution has examined 14 witnesses. Statement of the accused/applicants were also recorded under Section 313 Cr.P.C. in which they denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, vide judgment of conviction and order of sentence dated 15.01.15 the learned Chief Judicial Magistrate has convicted the applicants under Sections 409/34 and 414 IPC and sentenced them to undergo RI for three years and four years respectively with fine of Rs. 5,000/- on each count. This order was appealed by the applicants and in the appeal learned appellate court has confirmed the conviction and maintained the sentence. Hence, the present revision.

5. Counsel for the applicant Ashok Verma in Cr. Rev. No. 145/15 submits that the prosecution has not produced any document regarding entrusting of cement bags to the applicant at the relevant time. Even they have not produced any proof or fact that on the particular date, the cement Bags were sent through the applicant. Prosecution has utterly failed to prove the ingredients of Section 414 Cr.P.C. as it is not known whom the appellant is supposed to have helped in concealing the stolen property. Section 414 IPC makes it an offence for a person to assist voluntarily in stealing or disposing of or

making away with property which he knows or has reason to believe to be stolen property. The prosecution has simply to establish that the property recovered is stolen property and that the applicant provided help in its concealment and disposal. He submits that Mohd. Farooq (PW-10) from whose firm the cement bags were loaded for the construction work, has also supported the case of prosecution has stated that the vehicle in which the cement bags were transported was got broken down due to some mechanical fault near Charama for three days and it could not reach its destination. Mohd. Farooq has stated in para 4 of his statement that the police had told him that 680 bags of cement was kept in the house of Horilal as per instructions of the applicant and out of which 50 bags of cement were purchased at government rate. However, he has turned hostile. Counsel for the applicant submits that on the basis of instructions of police he has given the statement under Section 161 Cr.P.C. Appellate court also erred in holding the applicants guilty as there is no evidence against the applicants for convicting them under Sections 409 and 414 IPC. Lastly, he submits that the important witnesses have not supported the case of prosecution before the trial court.

6. Counsel for the applicant in Cr. Rev. No. 136/2015 submits that the applicant is not a public servant. Learned court below has ignored that the offence under Section 409 IPC provides that “whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, then only

offence is made out but in the instant case the court below has held the applicant liable to be convicted under Section 409 IPC which is bad in the eye of law. Section 414 IPC is also not made out against the applicant because all the seizure witnesses have turned hostile and they did not support the case of prosecution.

7. Counsel for the applicant further submits that Shyam Sundar Pisda PW-2, has admitted in his cross-examination that no indent has been filed in this case in relation to the alleged cement bags and the indent which was produced is of one Kanwal Jain. In all the government departments, specific document/tender is issued to the supplier as to how much quantity is needed and to be transported. In the instant case, no such documents were seized and the documents which were seized by the police were in relation to another private contractor Kanwal Jain and thus there is no breach of trust committed by the applicant. Mohd. Farooq (PW-10) has also admitted in para 6 of his statement that the cement bags were to be supplied to Kanwal Jain at Bhanupratappur but on account of some mechanical fault, the truck it got broken down and after three days i.e. on 21.06.2010, the truck reached Charama. He has also admitted that the alleged cement bags were unloaded at Bhanupratappur in the shop of Kanwal Jain. Therefore, the judgments of both the courts below are bad in law and facts.

8. On the other hand, State counsel supports the impugned judgment.

9. Heard Counsel for the parties and perused the material available

on record.

10. Mahesh Giri (PW-1) has not supported the prosecution case and has turned hostile. Shyam Sundar Pisda (PW-2) has stated that on 21.06.2010, he was posted as SDO in Water Resource Department and the applicant was ordered to take 680 bags of cement for construction of the stop dam at Thana Bodi and instead of transporting the same to the workplace, he kept 50 bags of cement in the house of Horilal and later on sold them to one Mangal Singh. He has stated that on getting information, he enquired and then a written report was made at police station Charama. FIR was lodged vide Ex.P-15. Yogesh Markam (PW-3), Gwal Singh (PW-4), Sadhuram Karbagiya (PW-5), Sohan Salam (PW-6), Ram Ratan Sahu (PW-7), Sanjay Lanjewar (PW-8) and Prakash Sahu (PW-9) have not supported the prosecution case and turned hostile. Mohd. Farooq (PW-10) is the person who supplied 680 cement bags in two trucks (340-340 bags) to one Kanmal Jain at Bhanupratappur. In his cross-examination he has admitted in para 6 that due to some mechanical fault the truck got broken down and could not reach the destination i.e. Bhanupratappur and it reached only after three days. Ahmed Virani (P.W-11) is the owner of the cement firm at Keshkal from where the cement bags were supplied to the applicant Ashok Verna. However, in cross-examination this witness has admitted the suggestions. Prashant Agrawal (PW-13) is the Investigating Officer who has done the investigation.

11. Close scrutiny of the evidence makes it clear that the prosecution has not produced any document to show the applicant Ashok Verma has committed criminal breach of trust in respect of

entrusted public property to him while in the capacity of public servant. The prosecution has not even proved that the cement bags seized from the house of applicant Horilal in Cr.Rev. No.136/2015, is a private person, and not a public servant. Shyam Sundar Pisda (PW-2) in para 11 has admitted that the truck loaded with cement bags was driven directly to Bhanupratappur and due to some mechanical fault, the truck got broken down and only after three days it reached there. He has admitted in para 25 and 26 that there is no document with regard to the progress in the work at Stop dam, Thana Bodi. It is also true that there was no document with the department with regard to the work handed over to the applicant and therefore, the documents have not been produced. He has also stated that he is not aware as to what offence has been committed by applicant Horilal.

12. The offences under Ss. 409 and 414, IPC cannot be sustained for the simple reasoning that the very complaint in this case itself does not contain any material facts and averments. The very observation above referred to, in the absence of any entrustment of property, is also against the same and that it is based on mere conjecture and surmise and even if so, it is mere inference. Having considered the whole gamut of the case and the records along with the impugned order, the basic ingredients for the offences under Sections 409 and 414, IPC are not at all available in the materials placed before the Court in the instant case. Therefore, the impugned order is liable to be set aside as it lacks every legality and propriety.

13. Thus, looking to the above facts and conferring the ingredients of Sections 409 and 414 IPC, the prosecution has failed to prove the

case beyond reasonable doubt and therefore, acquit them of the charges as levelled against them.

14. In the result, the revisions succeed and are accordingly allowed. Consequently, the impugned order passed by the Additional Sessions Judge, North Bastar Kanker in Cr.A. No. 02/15 dated 13.02.2015 confirming the conviction and sentence of the applicants as awarded by the learned Chief Judicial Magistrate, Kanker vide its judgment dated 15.01.2015 passed in Criminal Case No. 616/2010 is set aside and both the revision petitioners/applicants are hereby acquitted of the charges against them under Sections 409/34 and 414 IPC.

Sd/-  
(Rajani Dubey)  
Judge