

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 647 of 2014**

- Rajkumar Patre S/o Bagluram, aged about 25 years, R/o village Odhadabri, P.S. Kunda, Civil & Revenue District Kabirdham (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Station House Officer, P.S. Pathariya, District Mungeli (C.G.)

---- Respondent**And****CRR No. 881 of 2014**

- Punva Das Gendle S/o Tijau Ram, aged about 36 years, R/o village Douna, P.S. - Hirri, Civil & Revenue District Bilaspur (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : Station House Officer, P.D. Pathariya, District Mungeli (C.G.)

---- Respondent

For Applicant	:	Shri F.S. Khare, Advocate
For Respondent/State	:	Shri Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**ORDER****12/07/2019**

01. Since the aforesaid two revisions arise out of the common order dated 03.07.2014, they are being disposed of

together by this common order.

02. Being aggrieved by the order dated 03.07.2014 passed by the Additional Sessions Judge, Mungeli, District Bilaspur, in Criminal Appeal No.36/2011 modifying the judgment and order dated 30.06.2011 passed by Judicial Magistrate First Class, Mungeli, District Bilaspur in Criminal Case No.2/2011 convicting the accused/applicants under Section 409/34 IPC and sentencing them to undergo the period already undergone by them with fine of Rs.5,000/- each, plus default stipulation.

03. Brief facts of the case are that, complainant Reeman Singh Thakur, who was working as Chief Executive Officer, Janpad Panchayat, Pathariya, lodged a written complaint in Police Station Pathariya alleging therein that Rs.5,17,000/- was sanctioned for constructing Middle School Building under "Sarv Shiksha Abhiyan" for the year 2006-2007 and charge for executing the said work was given to the agencies named 'Janbhagidari Samiti' and 'Vikas Samiti' Middle School Badra Thakur and the then Secretary and Treasurer of agency namely Ved Prakash Verma and Satrupa Markam of the concerned agency respectively, withdrew Rs.1,00,000/- and valuation of work was found to be of Rs.1,05,699/-. Thereafter, accused/applicant Punva Das Gendle in CRR No.881/2014 and one Devcharan Netam were appointed as Secretary and Treasurer of the agency respectively, who withdrew Rs.1,06,800/- and further work was carried out, valuation of

which was found to be of Rs.99,753/-. It has been further alleged that, thereafter, Secretary applicants Punva Das Gendle, Shiksha Karmi Grade-III and Treasurer Raj Kumar Patre, Shiksha Karmi Grade-III, Middle School Badra, both withdrew Rs.3,50,000/- and instead of spending this money on construction work they embezzled the said amount. On the basis of written report, FIR was lodged against the accused/applicants under Sections 409 read with section 34 IPC. After completion of usual investigation, charge sheet was filed against the accused/applicants under Section 409/34 IPC and, accordingly, charges were framed by the trial Court against the accused/applicants.

04. So as to hold the accused persons guilty, the prosecution examined as many as 11 witnesses. Statements of the accused persons were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication.

05. Vide judgment and order dated 30.06.2011 the trial Magistrate has convicted the applicants under Sections 409 read with section 34 IPC. The judgment of the trial Court has been modified by the appellate Court vide impugned judgment dated 03.07.2014, hence this revision.

06. Learned counsel for the applicant in CRR No.647/2014 submits that the applicant has been falsely implicated in the crime in question and the impugned judgment passed by the

appellate Court being contrary to the law is not sustainable. He further submits that both the Courts below have failed to appreciate the evidence properly and conclusion drawn in holding the applicant guilty of the offence under Sections 409/34 IPC is contrary to the evidence on record. He would further submit that only on the basis of statement of Subhashani Masih (PW/6), Bank Manager, whose evidence do not inspire confidence, the accused/applicant has been convicted. He would also submit that the trial Court has not considered the evidence of other prosecution witnesses in its true perspective and committed grave error in convicting the accused/applicants.

Learned counsel for applicant in CRR No.881/2014 submits that according to the prosecution, the applicant and co-accused have withdrawn the amount from bank, but it failed in not examining the signature mentioned in the withdrawal form by the hand writing expert and, therefore, it is not proved by the prosecution that the signature mentioned in the withdrawal form was of the applicant and co-accused. It has been further submitted that prior to lodging of FIR, no valuation of construction work was done as is evidence from the evidence of Mahendra Pandey (PW/4).

07. On the other hand, learned State counsel supported the impugned judgment of conviction and order of sentence.

08. Heard learned counsel for the parties and perused the material on record.

09. Suryakant Upadhyay (PW/1) is Block Development Coordinator. He has stated that at the time of incident he was incharge of Middle School, Rs.5,17,000/- was sanctioned for construction of middle school in the year 2006-2007 & Ved Prakash Verma and Satrupa Markam were Secretary and Treasurer of the Construction Committee respectively. Shyam Sundar Dhruv (PW/2), Teacher and T.N. Verma (PW/3), Assistant Grade-I, are the witnesses to seizure of register made under Ex.P/3. Both the witnesses have admitted their signature thereon. Mahendra Pandey (PW/4) is Sub Engineer. He has stated that valuation work of construction of middle school at village Badra was done by him and he found that the work was incomplete. He gave his report in Ex.P/4. Riman Singh Thakur (PW/5) is C.E.O. of Janpad Panchayat, Pathariya. He has stated that an amount of Rs.5,17,000/- had been deposited in the account of "Janbhagidari Nirman Samiti" by Zilha Panchayat, Bilaspur, out of which some amount had been withdrawn by the accused/applicants. He has further stated that when he examined the construction work, he found that the work of Rs.2,00,000/- had been completed. He convened a meeting in which accused/applicants were also called and ordered them to complete the construction work or to deposit the amount so withdrawn by them. He has also stated that he had given information with regard to explanation of incomplete work and securing their presence in the meeting vide Ex.P/6. He has also submitted the details of

amount withdrawn by the accused/applicants vide Ex.P/7. Subhashni Masih (PW/6) is Bank Manager. She has stated that on five counts the amount had been withdrawn by the accused/applicants vide Ex.P/9 to Ex.P/13. The amount was withdrawn from the account No.15/253 of Janbhagidari Vikas Samiti Kanya Purv Madhyamik Shala, Badra. She has further stated that withdrawal was effected after matching specimen and earlier signatures made by the accused/applicants. Ram Kumar Kaushik (PW/7) is the Head Master. He has stated that at the time of incident, the accused/applicants were posted as Teacher and he had given information regarding their period of posting to the police. Ved Prakash Verma (PW/10) is Shiksha Karmi Grade III. He has stated that one agreement (Ex.P/21) was executed with him and Rajeev Gandhi Shiksha Mission for construction of new middle school building. Lalit Sahu (PW/11) has stated that he was Chairman in Jan Bhagidari from 2007 to 2010 and during his tenure construction of middle school at village Badra was going on. At beginning, Panchuram Dhruv was Chairman of Jan Bhagidari and Ved Prakash (PW/10) was Secretary. According to his information, Ved Prakash had executed the construction work of withdrawn amount, thereafter, Punva Das Gendle was appointed in place of Ved Prakash and Satrup Markam was Treasurer of Janbhagidari. He has further stated that when Ved Prakash (PW/10) had been transferred, he gave his resignation from the post of Secretary, and on his resignation,

Satrupa Markam also resigned from Treasurer. Thereafter, Devcharan Verma took the charge of Treasurer and thereafter Raj Kumar Patre was appointed as Treasurer.

10. Close scrutiny of the evidence makes it clear that none of the witnesses have stated regarding clear involvement of the accused/applicants in construction of middle school building. The charge of construction work was handed over from one person to another on their respective transfer. Even none of the witnesses have stated that any responsibility was assigned to the accused/applicants regarding construction of middle school building. An agreement (Ex.P/21) for constructing middle school building was executed with Ved Prakash Verma (PW/10) and there is no document available on record to show that any agreement was executed with the present accused/applicants to this effect. The information which was given by Head Master (PW/7) to the police regarding period and posting of the accused/applicants, vide Ex.P/14, clearly speaks that they were posted as Teacher, but there is no single document on record to show that they were made Secretary and Treasurer of the Jan Bhagidari and any responsibility was imposed upon them for construction of middle school building. So far as withdrawal of money from bank is concerned, Bank Manager (PW/6) has stated that on five counts, the amount had been withdrawn by the accused/applicants vide Ex.P/9 to P/13 and their signatures are on it, but this witness, in para 8 of her cross-examination,

has stated that the person who get transferred, cannot withdraw the amount until any written information is not received by the bank. She admits in para 9 of her cross-examination that she cannot say without going through record that any specimen signature of accused/applicants was available with the bank or not, but in para 10, she states that after opening an account if any charge of withdrawal is being given to another persons, the specimen signature along with the order is being received by the bank. She further states that she has no information regarding the alleged withdrawal along with the copy of order as at the relevant time, she was not posted there. This witness, in para 11, further admits that she has no information whether any cheque book for withdrawal of money from this account had been issued or not. That apart, the prosecution has failed to bring any report much less hand writing expert report to substantiate its case with regard to signature of the accused/applicants. In absence of such report, the prosecution case becomes doubtful. All that apart, from the lengthy cross-examination of Ved Prakash Verma (PW/10), it is crystal clear from Ex.P/21 that no agreement was executed with the accused/applicants for constructing middle school building, and the trial Court convicted the accused/applicants only on the basis of evidence of Subhashani Masih (PW/6), whose evidence do not inspire full confidence of this Court. From the aforesaid evidence on record, it is evident that no responsibility was

given to the accused/applicants for constructing middle school building and even there is no document on record which goes to show that the accused/applicants were made Secretary or Treasurer. Further, in absence of hand writing expert's report, it is not proved that the signatures on alleged withdrawal form were of the accused/applicants.

11. To sum up, this Court is of the considered opinion that the prosecution has not led enough evidence to prove the complicity of the accused/applicants in the crime in question beyond reasonable doubt. The trial Court while convicting and sentencing the accused/applicants has not considered the evidence of the prosecution in its true perspective and thereby committed error in convicting them.

12. In view of what has been discussed above, the findings recorded by the Courts below cannot be sustained in the eye of law and are liable to be set aside. The aforesaid revisions are thus allowed, judgment impugned is set aside and the accused/applicants stand acquitted of the charge levelled against them.

13. Revisions are thus allowed.

Sd/-

(Rajani Dubey)
JUDGE