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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 13.12.2019

Order Passed on : 13/02/2020

Cr.R. No.89 of 2006

- Ambika Prasad Mishra S/o Shri Lolar Prasad Mishra, aged about 40 years, resident of Village- Murtiha, Police Station Mauganj, District- Rewa, M.P.

---- Petitioner

Versus

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

---- Respondent

And

Cr.R. No.95 of 2005

- Malkeet Singh Gill, S/o Shri Chandra Singh Gill, aged about 31 years, R/o Risaipara, District- Dhamtari, C.G.

---- Petitioner

Versus

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

---- Respondent

For Petitioner (In Cr.R. No.89/2006)	:	Mr. Aman Upadhyay on behalf of Mr. Sushil Dubey, Advocate.
For Petitioner (In Cr.R. No.95/2005)	:	Mr. Shobhit Mishra, Advocate.
For respondent/State	:	Mr. Sudeep Verma, Dy.G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

13/02/2020

1. Cr.R. No.89 of 2006 has been filed challenging the judgment dated 29.01.2005 passed in Criminal Appeal No.17/2004 and Cr.R. No.95 of 2006 has been filed challenging the judgment dated 29.01.2005 in Criminal Appeal No.21/2004, in which the judgment of conviction and sentence passed by the Additional Sessions Judge, Dhamtari, District- Dhamtari, C.G., in Criminal Case No.1589/2003 delivered on

16.12.2003 was upheld, therefore, both the revision petitions are being disposed off by this common order.

2. The complainant- Ajay Kumar Meenpal, lodged F.I.R. in Police Station, Bilaspur, City- Kotwali on 12.06.1998 that applicant Ambika Prasad Mishra was Director of Rewanchal Vitt Avam Vyavasayik Vikas Ltd. and applicant Malkeet singh Gill, Regional Manager of the said company, their office was stituated in Dhamtari since the year 1994-98. The complainant has alleged that he was induced by applicant Malkeet Singh Gill that his company is recognized by Indian Reserve Bank and on making deposits the depositor will receive 08-10% annual interest on the same. The complainant and others made the deposits in the schemes of the company, subsequently their company office was closed and the complainant and others were refused payment from their deposits. Offence was registered under Section 420 of I.P.C. against the applicants, investigation was made and charge-sheet was filed.

3. The trial Court framed charges against both the applicants for commission of offence under Sections 420, 467, 468 and the Section 409 and 120 B of I.P.C. the applicant in both the cases denied the charges and prayed for trial. After completion of trial and they were held guilty for commission of offence under Sections 420, 409, 420 read with 120 B of I.P.C. and Section 409 read with 120 B of I.P.C. The applicant in both the cases were sentenced with R.I. of 07 years, 04 years, 02 years and 01 year respectively and fine of Rs.50,000/-, Rs.10,000/-, Rs.2,000/- and Rs.1,000/- respectively. It was further ordered that the sentence imposed upon the applicants shall be required to be served consequently. This judgment of conviction was challenged and appeal No.17/2004 and 21/2004 by the applicants has been decided by the impugned order. The learned trial Court has upheld the conviction as

well as the sentence and also the order of the trial Court that the sentences shall have to be served consequently by the applicants.

4. It is submitted by the learned counsel for applicant in Cr.R. No.89 of 2006- Ambika Prasad Mishra that the learned trial Court as well as the appellate Court both have committed error in convicting the applicant. The company in which this applicant was Director was duly registered and had authority to do business accordingly. No offence of cheating has been committed as it is the company which has suffered the loss and failed. The failure of business of the company cannot be regarded as any ground to persecute the Director and other officials for commission of offence of cheating. The company being registered, the interest of depositors is protected and the loss to the depositors can be recovered by the liquidation process which can be initiated under the provisions of Insolvency and Bankruptcy Code 2016 and as it is a case of period between 1994-1998, the matter of liquidation could have been taken up under the provisions of Company Act, 1956. The conviction of the applicant is only based on assumption which is not supported with any kind of evidence regarding the criminal or fraudulent conduct of the applicant.

5. Placing reliance on the judgment of Supreme Court in ***Kailash Kumar Sanwatia Vs. The State of Bihar*** reported in ***2003 (7) SCC 399***, it is submitted that it was necessary to be proved by the prosecution that the applicant had himself misappropriated or converted to his own use the amount taken in deposits and to prove. There was no reason to convict the applicant for offence under Section 420 or under Section 409 of I.P.C. Therefore, it is prayed that this revision petition be allowed and applicant be acquitted of charges.

6. On behalf of applicant Malkeet Singh Gill in Cr.R. No.95/2005, it is

submitted that the complainant in this case is Ajay Kumar Meenpal, who was an agent of the same company. There had been no complaint made by any of the depositors, therefore, the complainant in this case could not have been the person who has suffered any wrongful loss. The company had a Director named as Ambika Prasad Mishra and the applicant was simply an employee, therefore, he has not played any role in the said commission of offence. There is no direct evidence against the applicant that he has misappropriated or converted to his own use the amount deposited by the depositors. On the contrary one of the depositors Veena Kaushik (P.W.-6) has stated that she made deposits through the complainant which further clarifies that the applicant had played no role. It is further prayed in the alternative that the sentence imposed upon the applicant is too harsh which may be reduced and order be passed for concurrent running of sentences, it is prayed that this revision petition may be allowed.

7. Learned State counsel opposes the revision petition submits that this Court being a Revisional Court cannot proceed the evidence as if an appellate Court will do. The only scope of examining the revision petitions filed as whether the impugned orders have been passed in accordance with law, are proper and correct in all senses. It is although submitted that there is sufficient evidence present to show that the applicants have cheated the complainant and others. Applicant Ambika Prasad Mishra, who has examined himself in defence has stated that the bank account of the company being operated in the District Cooperative Central Bank, Dhamtari was joint in the name of both the applicants and the applicant Ambika Prasad Mishra and has stated that the co-accused Malkeet Singh is responsible for embezzlement and he had also admitted that there had been no authority to the company to

take deposits from the depositors. Therefore, the revisions filed by both the applicants are not sustainable.

8. Heard learned counsel for both the parties and perused the documents present on record.

9. On perusal of the statement and depositions of witnesses that are present in the record of the trial Court, I am of this view that there is present unrebutted evidence regarding commission of offence under Section 420 of I.P.C. for which the conviction against the applicants is sustainable. The only question arises regarding the presence of evidence for commission of offence under Section 409 of I.P.C. This Provision has wide scope in which a public servant, banker, merchant, factory broker, attorney or agent can be held responsible for criminal breach of trust in case such person is entrusted with any property which he misappropriates. The applicant Ambika Prasad Mishra has admitted that he was the Director of the company, although it is only a statement made by him that his company was a registered under the Companies Act, but there is no such document produced by him in that respect. The investigation also does not reveal any such information collected to show that the said company was registered under the provisions of Companies Act, 1956 as the company had been established on or before the year 1994 when the Act 1956 was prevailing. Further, it is clearly admitted by the applicant Ambika Prasad Mishra that the said company had no authorization from Reserved Bank of India to conduct its business as banking company for the purposes of running a business as a banking business. Apart from the authorization from Reserve Bank of India, other sanctions are also required such as from finance department and other financial authorities established by the Central Government in this respect. There is not a single mention made by the

applicants in their defence statement that they had any such authorization according to which they could enter into banking business by taking deposits, sanctioning and disbursing loans, collecting the interest and also paying interest to the depositors. Therefore, it was the burden of defence to establish that the business run by the applicants was a lawful business and in that the applicants have failed. Hence, when the business itself was not lawful, therefore, the intention of the applicants was from the very beginning to defraud the investors/collectors is clearly made out. The learned trial Court and the appellate Court both have not committed any error. The status of the applicants is very clearly covered under Section 409 of I.P.C. as it is not required for this provision that the business should be lawful and lawful business of banking or other kind of business is also covered under this provision. Therefore, the offence under Section 409 of I.P.C. is clearly made out against the applicants.

10. After appreciating the evidence that is present on record of the trial Court, and considering the legality of the finding given by the Courts below, I am of this view that there is no incorrectness in the orders passed by the Courts below. Therefore, these revision petitions are without any substance, however, the orders of the Courts below that sentences imposed shall run consecutively appears to be harsh. Both the petitions on the point of conviction are dismissed, however, on the point of sentence allowed with modifications. The sentences imposed upon the applicants are now ordered to run concurrently.

11. Accordingly, these petitions stand disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika