

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 524 of 2008

1. Jhumuklal, S/o. Halal Khor Sahu, aged about 65 years, R/o. Village Bhothali, P.S. & Tahsil Gurur, District- Durg (C.G.)
2. Premlal, S/o. Ferha Ram Lahare, aged about 45 years, R/o. Village -Dharsiva, Distt.-Raipur C.G., Presently R/o Village-Jevartala, Tahsil Dondilohara, Distt.-Durg C.G.

---- Applicants

Versus

State Of Chhattisgarh, Through : P.S. Gurur, Distt.-Durg C.G.

-----Respondent

For Applicants	: Mr. Chandrabhushan Kesharwani with Mr. Jitendra Gupta, Advocates
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For Respondent/State	: Mr. Priyanshu Gupta, Panel Lawyer
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/03/2020

1. This revision petition has been brought challenging the legality, propriety and correctness of the judgment dated 23.07.2008, passed in Criminal Appeal No. 25/2007, by the Court of Additional Sessions Judge (F.T.C.), Balod, District – Durg (C.G.), whereby the learned Appellate Court has maintained the judgment of conviction and order of sentence dated 21.05.2007, passed in Criminal Case No.92/2006, by the Court of Judicial Magistrate First Class, Balod, U/s. 409 of the I.P.C. and sentenced to undergo R.I. for 2 years and fine of Rs.500/-, for the offence U/s.467 of I.P.C. and sentenced to undergo R.I. for 1 year and fine of Rs.400/-, for offence U/s. 468 of I.P.C. and sentenced to undergo R.I. for 1 year and fine of Rs.300/-,

for the offence U/s. 471 of I.P.C. and sentenced to undergo R.I. for 6 months and fine of Rs.100/- and for the offence U/s. 420 of I.P.C. and sentenced to undergo R.I. for 1 year and fine of Rs.200/- with default stipulations.

2. The facts of the case are these that the applicant No.1 was elected Sarpanch of the Gram Panchayat – Bothali and the applicant no.2 was Secretary of the said Gram Panchayat on the date and time of the incident. The applicants had responsibility of disbursing the *Nirashrit* Pension to the beneficiaries of the *Nirashrit* Pension Yojana. It is alleged that one of such pensioner Jaggo Bai, wife of Parasram had expired on 22.10.1992, the applicants knowing the fact of death of the said Jaggo Bai made disbursal of pension amount of Rs.400/- on 22.11.1992 in a fraudulent and dishonest manner. A complaint was given by one Tanguram on the basis of which, Chief Executive Officer, Janpad Panchayat ordered for holding an enquiry. After submission of the enquiry report by the Enquiry Officer, a complaint was given to the police on the basis of which, FIR was lodged against the applicants. The case was investigated and charge-sheet was filed before the trial Court.
3. The learned Court of Judicial Magistrate First Class, Balod, District- Durg framed the charges against the applicants under Section 409, 467, 468, 471 and 420 of the Indian Penal Code. The applicants were tried and convicted in all the offences charged against them.
4. The appeal was preferred before the Court of Additional Sessions Judge (F.T.C.), Balod, District- Durg and the same has been decided by the impugned judgment, in which the conviction and

sentence ordered by the trial Court have been upheld.

5. It is submitted by the counsel for the applicants that the order of conviction and sentence against the applicants is totally erroneous and illegal. The applicant No.1, who had been a Sarpanch on the basis of election in Panchayat does not fall under the definition of government servant as defined under Section 14 of the I.P.C. and also under the definition of Public Servant, which is defined under Section 21 of the I.P.C.. FIR in this case is delayed by three years. The applicants challenged the findings of the Courts below, that the said pensioner/ beneficieary was living on the date the payment was made. The payment register that was seized in the investigation was sent for examination by the finger print expert, but the report of the expert report has not been proved in the trial, therefore, there is nothing against the applicants. The evidence regarding death of Jaggo Bai that has been produced in the trial was not admissible, therefore, that was not conclusive to hold that Jaggo Bai had expired on the date pension amount was disbursed.
6. It is further submitted that since the applicant No.1 is not a government servant or public servant, therefore, the conviction against him under Section 409 of I.P.C. is totally unsustainable. It is also argued that conviction against the applicants in all the other offences is also unsustainable, as the evidence of the prosecution is totally unreliable and not sufficient to lead to this conclusion that it was the applicants, who had committed the offence of misappropriation of public money, forgery of public records and cheating. Hence, the applicants were entitled for acquittal in this

case. It is prayed that the revision petition be allowed and the applicants be acquitted of the charges against them. It is prayed in the alternative that in case, this Court is not inclined to allow this revision and acquit the applicants in that case, then at least sentence imposed upon the applicants, which appears to be too harsh, may be reduced.

7. State counsel opposes the petition and the submission made in this respect. It is submitted that the prosecution has proved its case beyond reasonable doubt against the applicants. Therefore, there is no ground for interference in the impugned judgment.
8. I have heard the learned counsel for the parties and perused the records of the Courts below.
9. This Court while exercising the revisional powers cannot re-appreciate the evidence of the witnesses in a manner an appellate Court would appreciate. The only thing that can be exercised that if there is any perversity or illegality present in the order of the Courts below, only of such ground appears fit to be examined and i.e. this whether the conviction of the applicant No.1 under Section 409 of I.P.C. had been proper.
10. Section 409 of the Indian Penal Code provides as under :-

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—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, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

11. The applicant No.1 has been prosecuted under Section 409 of I.P.C. as public servant and the charge was also framed against him similarly. The definition of the government servant is given in Section 14 of the Indian Penal Code, which is as follows :-

“14. Servant of Government.—The words “servant of Government” denote any officer or servant continued, appointed or employed in India by or under the authority of Government.”

12. The definition of public servant is given in Section 21 of the Indian Penal Code, which is as follows :-

“21. “Public servant”.—The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:—

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(Second) —Every Commissioned Officer in the Military, [Naval or Air] Forces 4⁵ [***] of India];

[(Third) —Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;]

(Fourth) — Every officer of a Court of Justice [(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to

interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth — Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth — Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh —Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth — Every officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of [the Government], or to make any survey, assessment or contract on behalf of [the Government], or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of [the Government];

Tenth — Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

(Eleventh —Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;]

(Twelfth —Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).]”

13. It is on careful perusal of these provisions, it is found mentioned that elected representative is not included as public servant or government servant, therefore, the conviction of the applicant no.1 under Section 409 of the Indian Penal Code appears to be erroneous. He should have been charged for commission of offence under Section 406 of the Indian Penal Code and should have been sentenced for the same offence.
14. On perusal of the evidence present on record of the trial Court, the judgment of the trial Court and the judgment of the appellate Court, I am of this view that the learned Courts below have recorded their finding on the basis of the evidence present and in accordance with the law. The appreciation made and the conclusion drawn appears to be lawful and correct. Therefore, only ground on which this revision petition can be entertained is this that whether the conviction against the applicant No.1 under Section 409 of I.P.C. was not correct and legal, whereas, the conviction of the applicant

No.2 in all the offence charged against him and the conviction of the applicant No.1 in all the offence except for the offence under Section 409 I.P.C. needs no interference.

15. The prayer for reduction of the sentence has been made by the counsel for the applicants on the ground that it is a case of embezzlement of petty amount of Rs.400/- therefore, the sentence imposed upon the applicants are too harsh. The applicants have already under gone some period in jail and for the reason that the applicants are facing this litigation since the year 1996, therefore, no purpose would be served, if they are ordered to be placed in detention for serving out the remaining part of the sentence.
16. Considering on this submission, I am of this view that the offences in which the applicants have been convicted appear to be a grave nature, but the amount involved in the same is petty amount. Hence in this case, the reduction of sentence as prayed for appears fit to be allowed. Consequently, revision petition is allowed in part and with modification. The conviction of the applicant No.1 under Section 409 of I.P.C. is converted to conviction under Section 406 of I.P.C.. and his conviction under other offence are maintained as it is. Similarly the conviction against the applicant No.2 in all the offences are also maintained as it is. The sentence part is interfered with. The sentence of rigorous imprisonment, which has been earlier imposed by the Courts below is altogether set-aside and now it is ordered that the applicant No.1 is sentenced for the offence under Section 406, 467, 468, 471, 420 of the Indian Penal Code with the period of detention already under gone by him in jail along with fine

of Rs.500/-, Rs.400/-, Rs.300/-, Rs.100/- and Rs.200/- respectively for the said offences. The sentence imposed upon applicant No.2 by the Courts below is set-aside. The applicant No.2 is now sentenced for all the offences with the period of detention already under gone by him with fine of Rs.500/-, Rs.400/-, Rs.300/-, Rs.100/- and Rs.200/- respectively.

17. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram