

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.616 of 2006

- Chandrama Prasad Mishra aged about 40 years S/o Sri Samay Lal Mishra Permanent Resident of Berancha Police Station House Saraikil District Allahabad U.P. Presently residing at Club Para Mahasamund District Mahasamund Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh through Police Station House Ganj Raipur City, Tehsil and District Raipur Chhattisgarh

---- Non-applicant

For Applicant	: Mr. Sourabha Sharma, Advocate.
For State	: Mr. D.P. Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-05-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 29.09.2006 passed by III Additional Sessions Judge, Raipur, Chhattisgarh, in Criminal Appeal No.170/2006 by which the judgment of trial Court convicting the applicant under Section 408 read with Section 511 of I.P.C. with sentence of R.I. of one year along with fine of Rs.2,000/- with default stipulations was upheld.
2. According to prosecution case, the applicant was employed as a driver and collection agent by the complainant Ashok Jain, who is partner of Siddheshwar Rice Mill. It is alleged that the applicant made a collection of Rs.2,63,000/- from various persons in the month of October and November, 1995 and mis-appropriated the same. Applicant then lodged a false F.I.R. in the Police Station that the amount collected by him was

looted by unknown persons. The police inquired into the complaint made by the applicant and thereafter in the investigation, at the instance of this applicant himself, the amount mis-appropriated was recovered and seized. F.I.R. was lodged against the applicant registering the offence under Section 420 of I.P.C.

3. After filing of charge-sheet, the applicant was charged with offence under Section 409 read with Section 511 and Section 182 of I.P.C. After completion of trial, the applicant has been convicted and sentenced for offence under Section 408 read with Section 511 of I.P.C. by the trial Court, which has been upheld in the appellate judgment.
4. It is submitted by the learned counsel for the applicant that no case is made out against the applicant according to the evidence of prosecution and further the sentence imposed upon the applicant is too harsh for the simple reason, that it had been a case only of an attempt. Another reason presented is this that the applicant has compromised with one of the partners of the firm of the complainant regarding which the partner has deposed in favour of the applicant before the trial Court, which has not at all been taken into consideration. It is also prayed that the applicant has already undergone about 25 days in jail during the pendency of trial and appeal. Therefore, in case, this Court is not inclined to acquit the applicant then at least the sentence of R.I. imposed against him may be modified to the period of detention already undergone by him in jail.
5. Learned counsel for the State opposes the submissions and submits that it is a case in which the prosecution has very clearly proved the case against the applicant beyond reasonable doubt. Therefore, no case is made out for interference of this Court using the revisional

jurisdiction.

6. Heard counsel for both the parties and perused all the documents present.
7. On perusal of the evidence present in the record of the trial Court, it is found that the learned trial Court has not committed any error in coming to a conclusion that the applicant has committed the offence of attempt of breach of trust against his employer. Therefore, no error can be found regarding the conclusion of the trial Court and also the finding of the appellate Court in this respect. Now the only consideration needed is whether the sentence imposed upon the applicant is too harsh and needs to be interfered with.
8. On perusal of the record of the trial Court, it appears that the loss that has occurred to the complainant had been totally remedied, as all the amount was recovered and has been given in Supurdnama to him. One of the partners of the Siddeshwar Rice Mill namely Ajay Pincha has examined himself as defence witness. He has stated that he has compromised with the applicant and he has no grievance against him.
9. It is a case of the year 1995. The offence under Section 408 of I.P.C. is compoundable but the amount under mis-appropriation had to be within Rs.2,000/- at the time, when offence was committed. Subsequently, change has taken place by amendment in the Cr.P.C. in the year 2009, in which the rider of the amount fixed for compounding the offence under Section 408 of I.P.C. has been removed. Therefore, the applicant cannot have the direct benefit of this amendment because the amendment does not have any retrospective effect. However, it is a mitigating circumstance in favour of the applicant. Further, considering

that it is a case which is almost about 25 years old and the applicant had been throughout on bail during the pendency of trial, appeal and also during the pendency of this revision petition, the applicant has not made mis-use of this liberty so far. Hence, looking to the length of period undergone during litigation and also looking to the other mitigating circumstance that are present in favour of the applicant, I feel inclined to allow the prayer made by the applicant for reduction of sentence of imprisonment imposed upon him. Therefore, this revision petition is allowed with modification. The order of conviction against the applicant passed by the trial Court as well as the appellate Court is upheld as it is, however, the sentence of imprisonment is interfered with, which is set aside and it is ordered that the applicant is now sentenced with imprisonment of the period of detention already undergone by him in jail along with time as ordered by the Courts below and his bail bonds stands discharged.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge