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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 12.12.2019

Order Passed on : 28/01/2020

Cr.R. No. 1251 of 2019

- Chilaka Chandra Mouli Reddy S/o Shri Mastaan Reddy Aged About 34 Years R/o - Kotapalli, Anant Sagaram Mandal, Police Station- IV Town, Nellore, District - Nellore, Andhra Pradesh

---- Applicant

Versus

- State Of Chhattisgarh Through - Station House Officer, Police Station-Bodhghaat, Bastar, Jagdalpur, District- Bastar Chhattisgarh

---- Respondent

For Applicant	:	Mr. K. Rohan, Advocate.
For respondent	:	Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. This petition has been brought being aggrieved by the judgment dated 18.07.2019 passed in Criminal Appeal No.25/2019 by which the judgment and sentence imposed upon the applicant in Criminal Case No.1156/2017 dated 08.04.2019 was upheld and the appeal was dismissed.

2. The applicant and others were charged with offence under Section 420, 467, 468 and 471 read with Section 34 of I.P.C. along with Section 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. It was alleged that between November 2016 to February 2017, an office was established at Jagdalpur Styled as Fortune Media I.T. Solutions Company. A publicity was made regarding the scheme, that for the work of sending S.M.S. for various online companies, the persons concerned

shall be given a commission of 40 Paisa per S.M.S. The complainant Rajkumar Mandan applied for the job who was given an I.D. on payment of fees and other charges against which he initially received commission. The complainant then kept on recharging and he made deposits in total of Rs.3,50,000/- for renewing his I.D. Similarly, other affected persons also applied for the job, obtained I.D. and made deposits for renewal of I.D. and a total amount of Rs.20-25 lakh were deposited. It is alleged that after taking all the deposits, the applicant and others closed down their offices on 03.02.2017 and their whereabouts were not found. After lodging of F.I.R., the police investigated the case, in which it was found that the company Fortune Media I.T. Solutions Company was not a registered company, therefore, the business advertised by them by sending Short Message Services was not a recognized service. On completion of investigation, the charge-sheet was filed. After framing charges against the applicant and others, the trial was held and the learned trial Court has convicted the applicant for offence under Sections 420, 467, 468 and 471 read with Section 34 of I.P.C. and sentenced with R.I. for 3 years, 5 years, 3 years and 01 year respectively along with fine of Rs.25,000/- in each with default stipulations and Sections 4 and 5 of Prize Chit and Money Circulation Scheme (Banning) Act, 1978 and sentenced with R.I. for 01 year each along with fine of Rs.3,000/- and Rs.2,000/- respectively with default stipulations, which has been upheld by the impugned judgment in appeal.

3. It is submitted by the learned counsel for the applicant that the judgment of conviction and sentence against the applicant by the Courts below is totally erroneous, illegal and improper. The applicant was not named in the written complaint dated 03.02.2017 given in Ex. P/30, which mentions the name of the other accused persons who gave

inducements to the complainant and others on which the complainant and others made deposits. The name of the applicant has appeared in the statement of the witnesses recorded later on under Section 161 of Cr.P.C. and that to only this extent that this applicant need to visit the office for checking the accounts. The witnesses for prosecution have also very clearly stated that co-accused Krishnakant Patil was the proprietor of the company, who and the managers of the company were persons who gave inducements to the complainant and others. At the most, it can be held that the applicant was one of the employee of the main accused employed for verifying the accounts. Therefore, he cannot be said to have drawn any benefit from the offence committed. It is also submitted that there is no evidence to show that the applicant had been a proprietor, partner or associate of the said company. Therefore, the conviction against the applicant is erroneous and illegal, which is bad in law. Therefore, it is prayed that revision be allowed and the applicant be acquitted. It is submitted further that if this Court is not inclined to allow the revision petition, then looking to the length of detention of the applicant in jail, which is also 2 years and 7 months, the sentence imposed upon him may be reduced to the period of detention already undergone by him in jail.

4. Learned counsel for the State opposes the grounds raised in the revision petition and the submissions made in this respect. It is submitted that in fact, it was the applicant who was the master mind of the whole offence committed, but there is no document present to show that the applicant is proprietor, partner or associate, because the company was not registered under any law. The applicant is being prosecuted in one another case in the State of Madhya Pradesh. There is evidence present to show that the applicant used to come to the office at Jagdalpur for making collections, therefore, he cannot make

execuses that he was simply an employee of the company. The evidence is sufficient to show his involvement in the commission of crime, therefore, the revision is without any substance which may be dismissed.

5. Heard counsel for the both the parties and persused the documents present.

6. The learned Court of C.J.M., Jagdalpur has held that there is evidence present against this applicant regarding commission of offence and that was made the basis of conviction and imposition of sentence against him which has been upheld by the Appellate Court. On minutely scrutinizing the evidence of prosecution witnesses, it is found that M. Jagdishwar Rao (P.W.-1), Jasketan Joshi (P.W.-2), Animesh Vishwash (P.W.-3) and the complainant in this case Rajkumar Mandan (P.W.-4), have not made any incriminatory statement against the applicant.

7. Saroj Devi (P.W.-5) is the landlord who gave her house on rent to the co-accused Krishnakant Patil for opening office has not made any statement against this applicant.

8. Similary, Pushpa (P.W.-6) has also not made any statement against this applicant.

9. A.S.I. Akhilesh Singh (P.W.-7) has done part of the investigation and that investigation is not connected with this applicant.

10. Akshay Anshu (P.W.-8) is Branch Manager of Dena Bank, Jagdalpur. He has stated about the bank accounts were standing in the name of co-accused Krishnakant Patil and not mentioned in the name of this applicant.

11. Shalini (P.W.-9) has not identified the applicant, however, she had worked as an employee of the company. She is a hostile witness who has not at all supported the prosecution case.

12. Ashish (P.W.-10) is an employee of Municipal Corporation, Jagdalpur,

who has stated about the documents presented by co-accused Krishnakant Patil in Municipal Corporation for Registration of Fortune Media I.T. Solutions Company but he has not named this applicant.

13. Rakesh Yadav (P.W.-11) was the in-charge of Revenue Office of Municipal Corporation, who has stated about the issuance of establishment certificate to the Director of Fortune Media I.T. Solutions Company who was co-accused Krishna Kant Patil, he has also not named this applicant.

14. Umesh (P.W.-13) is one of the affected persons, who has not supported the prosecution case and declared hostile by the prosecutor. Lav Kumar (P.W.-14), the Accountant of Dena Bank, Jagdalpur has not identified the applicant neither he has stated anything against him.

15. Vipin (P.W.-15) is one of the affected persons who has not made any statement against this applicant.

16. Ved Prakash (P.W.-16) has similarly stated who has not identified the applicant and not stated anything against him.

17. Rohit Singh (P.W.-17) is another affected person who has not identified and not given any statement against this applicant.

18. Similar is the statement of Rishi Hemani (P.W.-18), Deepak Sharma (P.W.-19), Malkit Singh (P.W.-20) Tukal Joshi (P.W.-21), Manoj Tirki (P.W.-22).

19. Renuka Thakur (P.W.-23) has given statement that she joined the company as Executive and when she used to attend her duties, she saw that the applicant used to visit the office periodically for checking the files. In cross-examination, she has stated that she does not know what was the relation of this applicant with the company, she knew only about his visit.

20. Anjana (P.W.-24) was also employed by the company, who has stated against this applicant that he used to visit the office in 10 to 15 days and

used to supervise the work of office. She has alleged that this applicant was the person along with the co-accused persons who closed the offices and cheated the persons. In cross-examination, she has denied the adverse suggestions. The only statement of this witness which stands against the applicant is this that he used to visit the office periodically and see some work. There is no further detail that what kind of work the applicant used to do and whether he used to receive any amount from the persons affected. There is also no statement that this applicant was the person who gave any inducement to any of the persons affected.

21. Sandeep Singh (P.W.-25) has not identified the applicant and he has not made any statement against the applicant.

22. Inspector Shobha Mandavi (P.W.-26) has investigated the case who has stated that the witnesses had stated that the applicant was a partner of the company who used to visit the office periodically, therefore, he was arrested in this case. In cross-examination, she has admitted that the name of the applicant is not mentioned in the F.I.R. and there is no such seizure of document to show that the applicant has any connection with the Fortune Media I.T. Solutions Company.

23. P. Suresh (P.W.-27), Daljit Singh (P.W.-27, renumbered), Sanju (P.W.-27, again renumbered) have not given any statement against the applicant.

24. Manoj Pandey (P.W.-28) has stated that after reading the advertisement regarding the scheme of Fortune Media I.T. Solutions Company, he visited the office where he found this applicant present with other co-accused persons. Thereafter, he was given information about the scheme and the commission he will receive on sending S.M.S. In cross-examination, he has admitted that he had no transaction with the applicant, this statement regarding the association of the applicant with the other accused persons has remained unrebutted.

25. On scrutiny of the whole prosecution evidence, it is found that there had been evidence regarding the association of the applicant with the business of Fortune Media I.T. Solutions Company, on the basis of the statement given by some of the witness, which has remained unrebutted. Although the name of the applicant is not mentioned in the F.I.R. but the association of the applicant was revealed by the witnesses at the time of investigation and the evidence regarding his association which has been brought on record in the statement of some of the witnesses is sufficient to show the involvement of applicant in the commission of crime concerned. Therefore, I am of this view that the learned Courts below have not committed any error in convicting the applicant for the offence in which he has been convicted, therefore, as regards this part of the impugned order, I do not find any reason to interfere in the same.

26. Regarding the other part of the order of imposition of sentence, the prayer made on behalf of the applicant is considered, I am of this view that the sentence imposed upon the applicant for offence under Sections 420, 468 and 471 read with Section 34 of I.P.C. and Section 4 and 5 of Prize Chits and Money Circulation (Banning) Scheme Act, 1978 do not need any interference, however, the sentence imposed upon the applicant for offence under Section 467/34 appears to be excessive which is reduced to rigorous imprisonment of 03 years and sentence of fine imposed upon the applicant is maintained as it is. Therefore, this revision petition is allowed with modification in the manner mentioned hereinabove.

27. Accordingly, the petition stands disposed off.

Sd/-

Monika

(Rajendra Chandra Singh Samant)

Judge