

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 509 of 2008**

Prakash, aged about 39, son of Shri Nad alias Nandau alias Narad Kashyap, resident of Village Dewarhat, PS Lalpur, Tahsil Mungeli, District Bilaspur (CG) --- **Applicant.**

***Versus***

State of Chhattisgarh, through the Police Station Lalpur, District Bilaspur (CG) --- **Respondent.**

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For Applicant : Ms. Mrigakshi Singh, Adv.

For State : Mr. Kartikeya V. Agrawal, PL.

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**Hon'ble Smt. Justice Vimla Singh Kapoor**

**Order On Board**

**26/03/2021**

By way of concurrent findings recorded by learned Magistrate and the Additional Sessions Judge, FTC, Mungeli, the accused/applicant herein has been held guilty under Section 407 IPC and sentenced to undergo RI for six months and pay fine of Rs.500/-, plus default stipulation. The allegation against him is that he was entrusted 20 bags of cement and 250 KG of iron bar to be dumped at construction site where the Mahavir Podium was to be built but instead of the appointed place, he took the same to his own house and dumped the material there. On being asked about those irregularities on the part of the accused/applicant he kept beguiling the complainant on one pretext or the other and ultimately told him to do whatever he liked. This led to lodgment of the report (Ex.P-2) on the basis of which the investigation commenced and resulted in filing of the charge-sheet and framing of the charge accordingly.

2. As stated at the outset learned Magistrate vide judgment dated 14.11.2007 held the accused/applicant guilty under Section 407 IPC and sentenced him therefor as referred to above. Learned lower

appellate Court vide judgment impugned too affixed a seal of approval to the same in its entirety. Hence this revision.

3. From the evidence of complainant (PW-2) who at the relevant time was the Sarpanch of Village Boirpara it appears that out of the MLA fund, the complainant (PW-2) withdrew Rs.20,000/- and out of which he spent Rs.5000/- for purchasing 250 KG of iron bars and 20 bags of cement to be used for construction of a Mahavir Podium and for the said material being shifted to the site he hired the accused/applicant to transport the same to the construction site in a buffalo drawn cart, but he instead of taking the said material to the appointed site, dumped the same at his own house. On being asked as to why he did so, the accused/applicant told him to do whatever he liked. Evidence of this witness also gets corroboration from Kranti Kumar (PW-1) who had helped in loading the said material in the cart of the accused/applicant. Similarly, Khumar (PW-4) has also supported the version of the accused/applicant though partially. Seizure of the cement and iron bars made under Ex.P-3 also finds corroboration from PW-2. Though PW-6 has been declared hostile yet he has admitted his signature on the seizure memo.

4. Thus the evidence makes it explicitly clear that after being entrusted with the aforesaid property for being transported to the construction site in a buffalo drawn carrier of the accused/applicant, he carried the same to his own house and thus committed a criminal breach of trust in respect of that property. Both the Courts below do not appear to have deviated from the right path while convicting the accused/applicant under Section 407 IPC, and thus his conviction is hereby maintained.

5. However, looking to the fact that the incident had taken place in the year 1999 and the accused/applicant has already undergone the miseries of detention for about a fortnight, no useful purpose is going to be served in again shifting him behind the bars. Accordingly, the sentence imposed on him is reduced to the period already undergone.

6. The revision is thus allowed in part.

**Sd/-**  
**(Vimla Singh Kapoor)**  
**Judge**

Jyotishi/Ajay