

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 172 of 2019

- Sumeet Kumar, S/o Chandra Shekhar Sahu, Aged About 28 Years, R/o Village Bohardih, Tahsil Patan, P. S. Utai, District- Durg, Chhattisgarh. **---- Applicant**

Versus

- State of Chhattisgarh, Through- The Police Station Bhilai Bhatti, District- Durg, Chhattisgarh. **---- Non-Applicant**

For Applicant : Shri Shikhar Sharma, Advocate

For State/Respondent : Shri Anand Verma, Dy. G.A.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

12.11.2021

- 1) Challenge in this revision filed under Section 397 read with 401 of CrPC is to the judgment dated 10.03.2017 passed by passed by the Judicial Magistrate First Class, Durg, District- Durg (C.G.) in CIS No. 7342/2009 whereby the trial Court has acquitted the applicant of the charge under Section 403 of IPC by giving him benefit of doubt.
- 2) Learned counsel for the applicant submits that despite there being no evidence at all proving the complicity of the applicant in the crime in question, the trial Court was not justified in recording the finding that the applicant is acquitted by extending him benefit of doubt and it ought to have given him a clean acquittal. The applicant is preparing for the government services and if the observation of the trial Court regarding acquittal of the applicant “ by giving him benefit of doubt” is not omitted, it would adversely affect the future prospects of the applicant.
- 3) On the other hand, learned State counsel supports the impugned judgment.
- 4) Heard learned counsel for the parties.
- 5) In order to establish its case the prosecution examined only only

3 witnesses namely PW/1 Ashok Yadav, PW/2 Mahendra Ramteke and PW/3 Subhash Meshram. Allegation against the applicant and co-accused Ramesh @ Tinku is that prior to 31st December, 2008, in furtherance of their common intention they dishonestly used the stolen mobile phones of Nokia company and Huawei company bearing IMEI Nos. 354832024757476 & 353533026520166 respectively. Though PW/1 Ashok Yadav has stated that the said mobile phones were seized on the memorandum of the accused persons but the witness to the said memorandum PW/2 Mahendra Kumar Ramteke states that no such memorandum of the applicant was recorded or the mobile phones were seized in his presence. Likewise, the other witness to the memorandum and seizure PW/3 Subhash Meshram has also not supported the prosecution case. Both these witnesses are independent witnesses. Even PW/1 Ashok Yadav has also not supported the prosecution case at all. He has admitted that no memorandum statement was recorded by him and none of the proceedings of the case was conducted by him. Thus from the overall evidence aduced by the prosecution, it has failed to prove the guilt of the applicant. In these circumstances, this Court is of the opinion that the trial Court was not justified in recording the finding that the applicant deserves to be acquitted of the charge by giving him benefit of doubt whereas it is a case of clear acquittal for want of any incriminating evidence against the applicant or any suspicion pointing towards his guilt on the basis of evidence aduced by the prosecution.

- 6) In the result, the criminal revision CRR No. 172/2019 is allowed and the observation of the trial Court in para-11 of its judgment that the accused/applicant is acquitted of the charge under Section 403 of IPC by giving him benefit of doubt is, hereby modified and it is held that the applicant is acquitted of the charge under Section 403 of IPC for want of any evidence against him.

Sd/-

**(Gautam Chourdiya)
Judge**