

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 430 of 2015

- The State of Chhattisgarh through District Magistrate, Rajnandgaon (CG) --- Applicant.

Versus

- Rajesh Khandelwal, S/o Harishankar Khandelwal, aged about 42 years, R/o Ganjline, Rajnandgaon, PS Rajnandgaon, District Rajnandgaon (CG) --- Respondent.

For the Applicant/State :- Mr. Ravish Verma, GA

For the Respondent :- None.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

17.08.2021

Factual scenario involved in this case goes to show that the land admeasuring 5.5 acres jointly belonging to Ashok Kumar Verma (PW-2) and Mahendra Pratap Verma (PW-3) was sold out by the accused/respondent herein to one Gopal Agrawal for a consideration of Rs.14 lacs by forging a Power of Attorney on behalf of PW-2 and PW-3 by arraigning Mohammad Akaram and Vickky @ Gurwindar in their place impersonating themselves as PW-2 and PW-3. All this came to the notice of complainant Prakash Khetan (PW-1) who was the manager of PW-2 and PW-3 when the purchaser Gopal Agrawal had made an application for mutation proceedings and subsequently he made a written complaint (Ex.P-1) which led to registration of FIR (Ex.P-2) against the accused/respondent herein as well as his companions for the offences under Sections 419, 420, 467, 468, 471 & 120-B

IPC. After investigation the charge-sheet was filed against them under the same sections.

2. Learned Magistrate vide judgment dated 14.04.2014 passed in Criminal Case No.739/2012 found the respondent/accused guilty under Sections 467, 468, 471 & 420 IPC and imposed the sentence of Simple Imprisonment of various descriptions plus fine. On appeal being preferred against the judgment of learned Magistrate, learned lower appellate Court set aside the same by its judgment dated 06.05.2014 passed in Criminal Appeal No.13/2014 and thus acquitted the respondent/accused of all the charges levelled against him. It is this judgment of learned lower appellate Court which has been impugned in this revision by the applicant/State.

3. Heard counsel for the State and perused the entire material available on record including the deposition of the witnesses.

4. Though the prosecution has examined as many as 17 witnesses in support of its case, 6 out of them being PW-5 to PW-9 & PW-12 have been declared hostile and not supported the case of the prosecution. This apart, the other witnesses being PW-11, PW-14 and PW-15 have also not stated anything specific against the respondent/accused. On close examination of the Power of Attorney marked as Article-E said to be forged and the sale deed marked as Article-F said to be executed on the basis thereof, this Court noticed the thumb impression of PW-2, PW-3 and the accused but it has not come on record whether the same

have been subjected to the examination by the thumb impression expert as required under Sections 45, 47 and 73 of the Evidence Act so as to arrive at a definite conclusion of their being of those very persons, in particular that of the accused. So is the position with the signatures appearing on the said documents. No hand writing expert has been examined to affirmatively state whether any of the signatures was of the respondent/accused. This fact becomes more relevant for the reason that the respondent/accused in his 313 Cr.P.C. statement has emphatically denied his signatures on the documents of Articles E & F. As regards his photograph affixed on the Articles E & F, he has categorically stated that the same was taken from him by purchaser Gopal Agrawal. The other witnesses examined by the defence being DW-1 and DW-2 have also stated that the accused/respondent has been implicated in a false and concocted case. The other startling fact which stands against the prosecution is that though two persons namely Mohit Khan and Sewan Mandle were present at the time of the proceedings of Articles E & F yet they have been safely given up by the prosecution for the reasons best known to it. These witnesses, if examined, could have thrown enough light on the entire gamut of the facts so as to arrive at some definite conclusion regarding the guilt or innocence of the respondent/accused but unfortunately the same has not been done, and the view taken by learned Magistrate in such circumstances cannot be allowed to stand.

5. Thus considering the overall factual discussion made in the light of evidence available on record and also not being forgetful of the legal position that if the material collected by the prosecution can lead to formation of two plausible conclusions, the one favouring the accused has to surface, this Court is of the considered view that learned lower appellate Court has been fully justified in acquitting the respondent/accused of the charges levelled against him. No contrary view is required to be taken by this Court, and accordingly the judgment impugned dated 06.05.2014 is hereby affirmed.

6. Consequently, the revision being without any substance is liable to be and is hereby dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Jyotishi/Ajay

Sd/-
(Vimla Singh Kapoor)
Judge