

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 606 of 2021

- Alex Adward Kujur S/o Late Fransis Kujur @ Aashish Kujur Aged About 41 Years R/o Ghatsila, P.S. Ghatsila, District Purbi Singhbhum (Jharkhand),

---- Applicant

Versus

- State Of Chhattisgarh Through District Magistrate, District Janjgir Champa Chhattisgarh

---- Non-Applicant

For Applicant	: Shri Mirza Kaiser Beg, Advocate.
For Non-Applicant	: Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J

Order On Board

21/07/2023

1. This Revision is directed against the judgment dated 24.6.2021 passed by the 1st Additional Sessions Judge, Janjgir in Criminal Appeal No.31/2021 which in turn was preferred against the judgment and order dated 26.3.2021 passed by the learned Judicial Magistrate 1st Class, Akaltara in Criminal Case No.372/2019 whereby the applicant has been convicted for commission of offence under Sections 419 & 420 of the IPC and sentenced to undergo SI for one year & to undergo SI for 3 years with fine of Rs.50/- each, respectively. By the impugned judgment, learned 1st Additional Sessions Judge dismissed the Appeal

preferred by the applicant and modified the order of sentence whereby the fine amount imposed on the applicant by the learned JMFC was enhanced from Rs.50/- to Rs.2,05,000/-. It was also made clear that in case of failure of payment of fine amount, the applicant shall undergo SI for one year. The applicant has challenged the same in this Revision.

2. Case of the prosecution is that complainant Jagdish Sahu has lodged a written complaint with the concerned Police Station alleging that the present applicant and co-accused Monika Alex (wife of the present applicant) had introduced themselves as Sales Tax Officer posted at Delhi and they had exchanged their telephone numbers with the complainant. The accused persons induced him for allotment of petrol pump and purchasing of land, and for the said purpose, they demanded certain amount on the pretext of registration etc. The complainant had given an amount of Rs.2,50,000/- on various dates. It was alleged that even after receiving the aforesaid amount, neither the petrol pump was allotted to him nor any land was purchased in his name and thus, the accused persons had cheated him. On such allegations, an FIR (Ex.-P/19) was registered against the accused persons.
3. In order to prove the charge, the prosecution has examined as many as 7 witnesses, exhibited the documents (Ex.-P/1 to Ex.-P/39) as well as Article A-1 to A-28.
4. After hearing learned counsel for the parties and on the basis of material available on record, learned trial Court convicted the accused persons for offence under Sections 419 & 420 of the IPC and sentenced them to

undergo SI for 1 year & to undergo SI for 3 years with fine amount of Rs.50/-each, respectively. However, on Appeal preferred by the accused persons, learned 1st Additional Sessions Judge dismissed the Appeal and modified the fine amount, as mentioned in paragraph-1 of this order.

5. I have heard learned counsel for the parties at length and perused the records.
6. Learned counsel for the applicant would submit that the applicant and the complainant have already entered into compromise and the said petition was rejected by the Court below. Learned Appellate Court has already ordered to undergo substantive jail sentence and further ordered that the applicant shall also suffer jail sentence in the event of default in payment of fine amount, which has been enhanced by the appellate Court in aggregate for offence under Sections 419 & 420 of the IPC to tune of Rs.2,05,000/-, though the trial Court has ordered to pay a fine of Rs.50/- only. He would further submit that the appellate Court, according to Section 29 (2) of the CrPC, could not impose the fine exceeding Rs.10,000/- per month on the date of the offence. The appellate Court has also no power in view of second proviso to Section 386 of the CrPC to inflict greater punishment. Reliance is placed in the matter of **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another**¹.

7. On the other hand, learned State Counsel would submit that the Court

¹ (1999) 7 SCC 510

below has appreciated the evidence in proper perspective and finding of conviction under Sections 419 & 420 of the IPC is based on evidence available on record. The finding recorded by the Court below is just and proper and does not call for any interference. However, he does not dispute the proposition that while exercising the appellate jurisdiction against the judgment passed by the JMFC, fine amount cannot exceed from the pecuniary jurisdiction of the JMFC. But the Magistrate has power to award compensation invoking power under Section 357 (3) of the CrPC.

8. Jagdish Sahu, Complainant, (PW-3) has categorically stated in his evidence that he met the applicant in a train while coming from Raipur to Bilaspur. The applicant has introduced himself as Sales Tax Officer posted at Delhi and during conversations, they exchanged their telephone numbers and remained in touch telephonically. The applicant had assured him for allotment of petrol pump and purchasing of land and for the said purpose, the applicant had demanded certain amount on the pretext of registration etc. The complainant has transferred the money in the bank account of the applicant vide Ex.-P/6 to Ex.-P/18 & P/21, which shows that total amount of Rs.4 lakhs has been transferred by the complainant on different dates, but neither allotment of petrol pump was made in favour of the complainant nor any land has been purchased for the complainant. This fact has been further corroborated by the evidence of (PW-7) Anil Tiwari, who has proved registration of FIR (Ex.-P/19) on the basis of complaint

(Ex.-P/5). Evidence of the complainant remained unrebutted in cross-examination and the said fact has also been corroborated by the other evidence. Therefore, this Court is of the view that there is no illegality or infirmity in the finding recorded by both the Court below, as the same is based on evidence available on record. Thus, conviction imposed on the applicant under Sections 419 & 420/34 of the IPC is hereby affirmed.

9. Reverting back to the point of sentence of fine amount, from the records, it appears that the incident occurred on 13.6.2019. Allegation is that the applicant impersonated himself as Sales Tax Officer and induced the complainant for allotment of petrol pump as also some land. For the said purpose, the applicant had demanded certain amount from the complainant and on subsequent dates, the complainant has transferred an amount in the account of the applicant.
10. According to Section 29 (2) of the CrPC, the Court of a Magistrate of the first Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees or of both. Further, second proviso to Section 386 of the CrPC provides that the appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal. Therefore, even if the Judicial Magistrate 1st Class has jurisdiction to try the offence in question, the appellate Court could not have passed the sentence more than the one passed by the

JMFC for that offence. Therefore, enhancement of fine amount exceeding the jurisdiction of the Magistrate by the appellate Court is not in accordance with law and the same is not sustainable.

11. In this regard, in the matter of **K. Bhaskaran** (Supra), the Hon'ble Supreme Court has observed in paragraphs 27 to 31 which read thus:-

27. The High Court has imposed a sentence of imprisonment for 6 months and a fine of Rs one lakh on the accused. Section 138 of the Act provides punishment with "imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of cheque or with both". But the court cannot obviate the jurisdictional limit prescribed in Section 386 of the Code. Though the said provision confers power on the court of appeal to reverse an order of acquittal and find the accused guilty and pass sentence on him according to law, even the High Court when it is the court of appeal has to conform to the second proviso to Section 386 of the Code. It reads thus:

"Provided further that the appellate court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the court passing the order or sentence under appeal."

28. In this context a reference to Section 29(2) of the Code is necessary as it contains a limitation for the Magistrate of the First Class in the matter of imposing fine as a sentence or as a part of the sentence. Section 29(2) reads thus:

"29. (2) The Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees, or of both."

29. The trial in this case was held before a Judicial Magistrate of the First Class who could not have imposed a fine exceeding Rs 5000 besides imprisonment. The High Court while convicting the

accused in the same case could not impose a sentence of fine exceeding the said limit.

30. It is true, if a Judicial Magistrate of the First Class were to order compensation to be paid to the complainant from out of the fine realised the complainant will be the loser when the cheque amount exceeded the said limit. In such a case a complainant would get only the maximum amount of rupees five thousand.

31. However, the Magistrate in such cases can alleviate the grievance of the complainant by taking resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (*Hari Singh v. Sukhbir Singh* [(1988) 4 SCC 551 : 1988 SCC (Cri) 984 : AIR 1988 SC 2127]). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs 5000 the Court has power to award compensation to be paid to the complainant.”

12. Considering the fact situation of the case and in the interest of justice, this Court deems it appropriate to direct that the applicant instead of fine amount of Rs.2,05,000/-, as has been ordered by the appellate Court, shall pay a compensation of Rs.2,00,000/- to the complainant, and the complainant would be entitled to receive the said amount by way of compensation as already ordered by the appellate Court. Ordered accordingly. Moreover, the applicant has already suffered the substantive jail sentence as also the sentence of default of fine amount. It is further directed that the same shall be treated as default sentence for the compensation, as ordered by the two Courts. The applicant is

not required to suffer further jail sentence, as the substantive jail sentence has already been undergone by him and also for the fine sentence, he has already completed the default sentence. The remaining part of the impugned judgment shall remain intact.

13. With the aforesaid modifications, the Revision is disposed of.

14. Before parting, this Court would like to appreciate the kind assistance rendered by Shri AK Prasad, Advocate.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve