

SUPREME COURT OF INDIA

Bhagyan Das

Vs.

State of Uttarakhand

Crl.A.No. 465 of 2019

(R.Subhash Reddy and R.Banumathi,JJ.,)

11.03.2019

JUDGMENT

R.Subhash Reddy,J.,

SLP(Crl.) No.125 of 2017

1. Leave granted.
2. This appeal is filed by the sole accused in Criminal Case No.307 of 2006 on the file of Chief Judicial Magistrate, Uttarkashi, aggrieved by the judgment dated 21st November 2016 passed in Criminal Revision No.168 of 2009 by the High Court of Uttarakhand at Nainital.
3. The case in nutshell against the appellant-accused is as follows.
4. Government granted the finance of Rs.9800/- in the year 1991-92 under the Poor Persons Residential Scheme, among others, to Smt. Deveshwari Devi. Out of the said amount, Rs.4600/- were in the form of debt and remaining amount of Rs.5200/- was in the form of assistance (non-refundable) to the Government. During the relevant time, the appellant- accused - Bhagyan Das was working as Village Development Officer (V.D.O). As per the Scheme, the whole amount had to be withdrawn by joint signatures of beneficiary and V.D.O. It is the case of the prosecution that appellant Bhagyan Das, misusing his position of a Government servant, procured the signature of Smt. Deveshwari Devi and misled her and paid only Rs.4000/- and thus he utilized the rest of the amount for his personal benefit and gain.
5. Pursuant to a complaint lodged by Smt. Deveshwari Devi by registering First Information Report and on completion of investigation, chargesheet was filed against the appellant- accused in Criminal Case No.307 of 2006 on the file of the Chief Judicial Magistrate for the offences punishable under Sections 409 and 420B of the Indian Penal Code (IPC). The trial court acquitted the accused for offence under Section 409 IPC but convicted him for offence under Section 420 IPC and sentenced him to undergo two years'

rigorous imprisonment and also imposed a fine of Rs.2000/-.

6. Aggrieved by the conviction recorded and sentence imposed, the appellant has preferred Criminal Appeal No.18 of 2009 before the learned Sessions Judge. The learned Sessions Judge did not interfere with the finding of conviction. However, he modified the quantum of sentence by reducing it from two years' rigorous imprisonment to one year, and sustained the imposition of fine.

7. Challenging both the judgments, i.e., judgment of the trial court as modified by the appellate court, the appellant has filed criminal revision petition in Criminal Revision No.168 of 2009 before the High Court of Uttarakhand at Nainital. In the aforesaid Criminal Revision, Compounding Application (CRMA 1937 of 2016) was filed seeking compounding of the offence, supported by the affidavit of the appellant- accused - Bhagyan Das and Smt. Deveshwari Devi. Though both parties have appeared before the High Court in person and sought compounding of the offence, the High Court, by recording a finding that, it is not a case which leaves its effect only on the complainant - Smt. Deveshwari Devi, but to the society at large, has declined to compound the offence by order dated 21.11.2016. While rejecting the application for compounding, the High Court also dismissed the Criminal Revision itself.

8. We have heard Sri Shyam D. Nandan, learned counsel appearing for the appellant, and Sri Jatinder Kumar Bhatia, learned counsel appearing for respondent-State and also perused the impugned judgment and the entire materials placed on record.

9. Even in this appeal, it is argued by learned counsel for the appellant that in view of the provision under Section 320 of the Code of Criminal Procedure, the offence under Section 420 IPC is compoundable with the permission of the court. It is further argued by learned counsel, that while dismissing the application for compounding, High Court has dismissed the Criminal Revision also without considering the various grounds raised in the Revision Petition. It is further submitted that the alleged incident was of the year 1991-92, but the complaint was lodged belatedly on 05th of November 2004. Further it is submitted that appellant is a senior citizen and the High Court has committed error in dismissing the Criminal Revision without considering the same on merits. On the other hand, learned counsel appearing for the State has submitted that, merely because an offence is compoundable under Section 320 Cr.PC, if the offence for which the appellant is convicted has its adverse social impact on the society, it need not be compounded. It is further submitted that as much as Criminal Revision is also dismissed by the High Court, no case is made out in this appeal to interfere with the conviction recorded and sentence imposed on the appellant.

10. Having heard the learned counsel on both sides we have perused the impugned judgment and also other material placed on record. It was the case of the prosecution that in the beneficial scheme introduced for poor persons under residential scheme an amount of Rs.9800/- was sanctioned during the year 1991-92 to the complainant. It is the specific case of the complainant that though she was to be paid entire Rs.9800/-, but appellant misled her and procured her signature and made payment of only Rs.4000/- and he has

utilised rest of the amount for himself for his personal benefit and gain. Merely because an offence is compoundable under Section 320 Cr.PC, still discretion can be exercised by the court having regard to nature of offence, as such it is rightly held in the impugned judgment that as the offence for which appellant was convicted and sentenced, it will have its own effect on the society at large. In view of the reasons recorded in the impugned order rejecting the application for compounding, it cannot be said that the High Court has committed any error in not accepting the application filed for compounding the offence.

11. At the same time it is to be noticed that alleged incident was of the year 1991-92 and complaint was lodged belatedly on 05th of November 2004, nearly 12 years after occurrence of incident. Having regard to facts and circumstances of the case and considering the age of the appellant, we are of the considered view that while confirming the conviction recorded by the courts below, it is a fit case to modify the sentence imposed on the appellant for the period already undergone. Ordered accordingly. Further, we affirm the amount of fine imposed on the appellant.

12. For the aforesaid reasons, this appeal is partly allowed, by modifying the sentence imposed on the appellant, as referred above. The judgment of the trial court, as confirmed by the appellate court and High Court, stands modified to the extent indicated above.