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**(2019) 02 CHH CK 0117**

**Chhattisgarh High Court**

**Case No:** Criminal Revision No. 279 Of 2005

Awadh Ram Sahu And Ors

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Feb. 8, 2019

**Acts Referred:**

- Indian Penal Code, 1860 - Section 409
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Vimla Singh Kapoor, J

**Bench:** Single Bench

**Advocate:** S.P. Sahu, Gary Mukhopadhyaya

**Final Decision:** Allowed

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**Judgement**

Vimla Singh Kapoor, J

1. Applicants herein have filed this revision petition against the judgment dated 28.06.2005 passed by Additional Sessions Judge, Baloda Bazar in

Criminal Appeal No. 236/2004 maintaining their conviction u/s 409 IPC but reducing the jail sentence to one year from that of three years as imposed

by the trial Court by its judgment dated 24.08.2004 passed in Criminal Case No. 31/1984.

2. Facts of the case in brief are that at the relevant time the surviving accused Nammulal was the in-charge manager and deceased-accused

Awadhram was the salesman of Gramin Sahkari Samiti, Khartora and thus being the public servant they mis- appropriated the consumables worth Rs.

15,032.12. On physical verification by the supervisor namely Motilal (PW-1) followed by audit done by auditor Tukaram (PW-6) also this mis-

appropriation was worked out. On matter being reported to the police, offence under Section 409 IPC was registered against the accused/applicants

herein and one Malikram (acquitted by the trial Court) and after completion of investigation challan was laid and charge framed accordingly.

3. On the basis of material on record, learned Magistrate found the accused/applicants herein guilty under Section 409 IPC but acquitted the accused

Malikram at the same time. Judgment passed by learned Magistrate dated 24.08.2004 as regards conviction has been maintained but it has been

modified as far as sentence imposed on the applicants is concerned. Hence this revision.

4. Counsel for the applicants submits that he is not pressing this revision on merit and his sole argument would be as regards sentence. He also

submits that looking to the old age of the surviving applicant and the incident being quite old, it would be interest of justice if the sentence imposed on

him is reduced to the period already undergone. State counsel however supports the judgment impugned as a whole.

5. Motilal (PW-1) who did physical verification of the stock vide reports Ex. P-1, P-2 and P-3 has stated that there was deficit in the stock of urea,

food items and other consumables. He has further stated that physical verification was done in presence of accused Nammulal and he even signed the

reports Ex. P-1, P-2 and P-3. This witness has also stated that the key of the godown of the society always remained with accused Nammulal.

Seizure of stock register, audit note, charge report of accused Nammulal made under Ex. P- 6, P-10 and P-12 has also been supported by PW-1 and

PW-3. Tukaram (PW-6) - the auditor who gave report Ex. P-18 has also supported the case of the prosecution stating that he noticed certain shortage

in the stock of urea, rice, sugar, edible oil etc. Audit report Ex. P-15 also shows that deceased-accused Awadhram had also committed mis-

appropriation of the food items and other consumables worth Rs. 9,304.15. All this apart, accused Nammulal has also admitted certain things in his

statement recorded under Section 313 of the Code of Criminal Procedure while answering the question Nos. 1,3,12 to 18, 44 and 46 as regards the

incident occurred in between 1.7.1980 and 30.6.1981, his posting as in- charge manager of the society at that time, shortage of urea noticed by PW-1

and PW-6, audit being done during that period, value of the deficit urea, physical verification of stock register etc. Thus in the light of the evidence of the witnesses it can safely be said that prosecution has proved its case beyond reasonable doubt that the accused/applicants committed criminal breach of trust in respect of the property they were entrusted being the in-charge manager and salesman of the Gramin Sahkari Samiti, Khartora.

V.C. Jain (PW-7) is the investigating officer and he too has fully supported the case of the prosecution. In overall view of the matter, conviction of the accused/applicants under Section 409 IPC being based on the evidence collected by the prosecution does not suffer from any illegality or infirmity and it is maintained accordingly.

6. As regards sentence, considering the age of the surviving accused Nammulal which at present appears to be 70 years and also keeping in view the incident being of 1980-1981, this Court thinks it proper to reduce the sentence to the period already undergone which comes to about 15 days as it would not be in the interest of justice to again send him to jail at the fag end of his life journey. Order accordingly

7. Since applicant Awadh Ram Sahu died during the pendency of this revision, no order as regards the sentence to be imposed on him is required to be passed by this Court.

8. In the result, the revision is allowed in part with the observations made above.