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**(1996) 04 AHC CK 0135**

**Allahabad High Court**

**Case No:** Criminal Revision No. 544 of 1996

J. Danial (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** April 16, 1996

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 420

**Citation:** (1996) 20 ACR 897

**Hon'ble Judges:** G.S.N. Tripathi, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

G.S.N. Tripathi, J.

This revision arises out of the judgment and order dated 18.1.1996 passed by the 1st Addl. Sessions Judge, Bareilly, whereby he had dismissed the criminal appeal No. 145/95 filed by the accused. That appeal arose out of judgment dated 28.6.1995, passed by Addl. C.J.M., Bareilly in criminal case No. 9 of 1995, whereby the learned Addl. C.J.M. held the accused guilty on a charge u/s 420, I.P.C. and sentenced him to undergo R.I. for a period of three years and further to pay a fine of Rs. 36,000. On failure to pay the fine, one year's simple imprisonment was awarded out of the fine so recovered, a sum of Rs. 35,090 would be paid to the complainant Smt. Kusum Agarwal by way of compensation.

2. The accused had agreed to supply goods at concessional rate and received Rs. 35,090 as earnest money. All of a sudden, he closed his shop on 11.7.1993. This way, he has defrauded the complainant to the tune of Rs. 35.090.

3. The complainant was examined as P.W. 1. She narrated the entire story. P.W. 2, S.I. Cyan Prakash is the Investigating Officer.

4. The accused in his statement u/s 313, Code of Criminal Procedure has said that he was simply an employee of the firm, known as Subham and had not received the money.
5. Smt. Kusum Agarwal, in his statement, has detailed the payments made by her and her relatives to the tune of Rs. 35,090. She has given the details of goods, which were offered to be purchased.
6. After a close analysis of the evidence on the record, the learned trial court found that the accused had duped the complainant. He convicted and sentenced the accused as noted above.
7. Feeling aggrieved, the accused has preferred this revision.
8. I have heard the learned Counsel for the parties and also perused the record. I find that there is no force In this revision and it deserves to be dismissed, except with the modifications detailed below: The findings of fact have not been challenged before me by its learned Counsel.
9. The learned Counsel for the revisionist urged that the accused is in jail for more than 2V2 years and he is ready to pay the fine of Rs. 36,000 as levied by the learned trial court.
10. Looking to the fact that the accused is already in jail for 2 1/2 years. I find that the sentence should be confined to the period already undergone by the accused. However, the sentence of fine is maintained.
11. Accordingly, the revision is dismissed with the modification that the sentence is confined to the period already undergone by the accused. The sentence of fine is maintained. It shall be recovered from the accused within a period of one month from today. Out of the fine so recovered a sum of Rs. 35.090 would be paid to the complainant by way of compensation.
12. It is made clear that before releasing the accused, the learned C.J.M. concerned shall take two sureties of Rs. 36,000 each and a personal bond in the like amount to his satisfaction.