NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 915 OF 2022
(ARISING OUT OF SLP (CRL.) NO.800 OF 2021)

Malkeet Singh Gill .....Appellant

Versus

The State of Chhattisgarh .....Respondent

J U D G M E N T

J.K. Maheshwari, J.

Leave granted.

2. The appellant has filed the present appeal against the judgment dated 13.02.2020 passed by the High Court of Chhattisgarh at Bilaspur in Cr. R No. 95 of 2005, whereby the High Court has upheld the order dated 29.01.2009 passed by the Additional Sessions Judge, Raipur in Criminal Appeal No.21 of 2004 and the order dated 16.12.2003 passed by the Chief Judicial Magistrate, Dhamtari in C.C. No.1589 of 2003. While convicting the appellant for the charges under Sections 409, 420, 409 read with Section 120-B and 420 read with Section

120B of the Indian Penal Code (in short 'IPC'), the Trial Court sentenced them to undergo rigorous imprisonment of 04 years, 07 years, 01 year and 02 years respectively along with fine of Rs.10,000/-, Rs.50,000/-, Rs.1,000/- and Rs.2,000/- respectively. The Trial Court and the Appellate Court directed to serve the sentences one after the other. The High Court while allowing the Revision in part directed that sentences so awarded shall run concurrently.

3. The facts briefly put are that, one Ambika Prasad was the Director of the Company namely Revanchal Vitta and Commercial Vikas Limited Company (herein after referred to as 'the Company') and the appellant/accused No.2 was the Area Manager of the Company. The Company was engaged in the activity of collecting money through its agents by deposits like a Bank and assured to give 8 to 10% annual interest to the depositors. The passbook and ledger accounts were also kept and maintained by the Company with respect to deposits. The money deposit receipts were also given to the depositors. The depositors have made deposits with intent to earn interest, as promised. Upon maturity when the return of deposits was asked

with interest, it was denied and later the Company was closed. Alleging said fact, the complainant namely Ajay Kumar Meenwal filed a written complaint on 12.06.1998 against Ambika Prasad and the appellant/accused No.2 for deceiving him and the public at large under the guise of wrong information, that their Company is recognized by Reserve Bank of India. They induced the depositors offering attractive return, but on taking deposit the amount of such deposit was not returned at the time of maturity and their deposit amount is misappropriated. On the complaint, as per allegations, initially offence under Section 420 of IPC was registered. Upon further investigation, the passbook, receipt, ledger accounts etc. were seized, statements of witnesses were recorded and offences under Sections 467, 468, 471, 120-B read with Section 34 of IPC were added.

4. The Trial Court framed the charges under Sections 409, 420, 467, 468 read with Section 120-B of IPC and examined 24 prosecution witnesses. After detailed deliberation and considering the rival contentions of the parties, the Trial Court convicted the accused persons for the charges under Sections 409, 420, 409 read with 120-B and 420 read with 120-

B of IPC as the charges under Sections 467 and 468 of IPC have not been proved beyond reasonable doubt. Being aggrieved, the appellant and other co-accused challenged their conviction before Additional Sessions Judge, Dhamtari. The Appellate Court vide judgment dated 29.01.2005 dismissed the appeal and upheld the order of conviction and sentences as directed by the Trial Court.

5. Assailing the order passed by the Trial Court and the Appellate Court, appellant and the other co-accused filed Criminal Revision Nos.95 of 2005 & 89 of 2006. The High Court maintained the conviction with the observation that commission of an offence under Section 409 of IPC has been proved because the agents were functioning under the instructions of the appellant. The depositors deposited the amount under a trust which has been breached by not refunding the same by the company. Thus, the Court while affirming the finding to prove the guilt of charge under Section 420 IPC also maintained the conviction for an offence under Section 409 IPC assigning the reasons that appellant has failed to show any authorization by the Reserve Bank of India, and other sanctions required from

the Finance Department and also of other authorities of Central Government. However, the High Court while maintaining the conviction directed that the sentence so awarded shall run concurrently and the findings of the courts below to such extent be set aside.

6. Appellant by filing the instant appeal contends, the charges for an offence under Sections 420 and 409 of IPC are antithetical to each other, hence the appellant cannot be convicted for both the charges. It is said the charges under Section 420 of IPC is not made out since the prosecution has failed to prove 'dishonest intention' of cheating; the appellant was only an employee and has been made a scapegoat for the purpose of selective prosecution; the ingredients of Section 409 are not made out since the prosecution has failed to prove that the amount which was deposited was misappropriated by the appellant for his own use.

7. Per contra, learned counsel for the respondent has argued to support the findings recorded in the impugned judgment and urged the findings of conviction concurrently recorded by the courts below are neither perverse nor against

the law and do not warrant interference by this Court. It is said the ingredients for an offence under Sections 409 and 420 of the IPC have rightly been proved in the instant case by the courts below; the argument regarding conviction of Sections 409 and 420 of the IPC both being antithetical was never raised before the courts below, which cannot be permitted to raise at this stage.

8. Heard Mr. Awanish Kumar, learned counsel for the appellant and Mr. Sourav Roy, Deputy Advocate General for the State of Chhattisgarh and perused the record. Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two Courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate Court and the scope of interference in revision is extremely narrow. Section 397 of Criminal Procedure Code (in short 'CrPC') vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed,

and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

9. This Court in the case of ***'Manju Ram Kalita vs State of Assam - (2009) 13 SCC 330'***, while dealing with the scope of re-appreciation of evidence by higher Court in criminal revision, observed in paragraphs 9, 10 and 11 of the judgment as under -

> *"9. So far as Issue 1 is concerned i.e. as to whether the appellant got married with Smt Ranju Sarma, is a pure question of fact. All the three courts below have given concurrent finding regarding the factum of marriage and its validity. It has been held to be a valid marriage. It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse. The higher court does not sit as a regular court of appeal. Its function is to ensure that law is being properly administered. Such a court cannot embark upon fruitless task of determining the issues by reappreciating the evidence.*
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> *10. This Court would not ordinarily interfere with the concurrent findings on pure questions of fact and review the evidence again unless there are exceptional*

circumstances justifying the departure from the normal practice.

> *"8. ....The position may undoubtedly be different if the inference is one of law from [the] facts admitted and proved or where the finding of fact is materially affected by violation of any rule of law or procedure."*

11. Thus, it is evident from the above that this Court being the fourth court should not interfere with the exercise of discretion by the courts below as the said courts have exercised their discretion in good faith giving due weight to relevant material and without being swayed by any irrelevant material. Even if two views are possible on the question of fact, we, being the fourth court, should not interfere even though we may exercise discretion differently had the case come before us initially. In view of the above, we are not inclined to interfere with the finding of fact so far as the issue of bigamy is concerned nor the quantum of punishment on this count is required to be interfered with."

10. As per the settled legal position and after conviction by the Trial Court and the Appellate Court on filing the revision the High Court maintained the conviction upholding the findings of the two courts. The High Court found the finding recorded by the two Courts to serve the sentence consecutively by the appellant and the other co-accused were not correct, hence set aside and directed to run such sentence concurrently. In our considered opinion, the finding of fact as recorded by the Trial Court and the Appellate Court has rightly not been interfered while maintaining the conviction against the

appellant. On the issue of sentence also the direction as issued by the High Court is in consonance with the provisions of Section 31 of Cr.P.C which confer full discretion to the Trial Court as well as Appellate Court to order the sentences to run concurrently in case of conviction for two or more offences.

11. In light of the above observation made, this Court in the case of ***Sunil Kumar @ Sudhir Kumar & Anr v. The State of Uttar Pradesh (Crl. Appeal 526 of 2021)*** relied upon the judgment of ***O.M. Cherian alias Thankachan v.State of Kerala & Ors. - (2015) 2 SCC 501,*** wherein the Court in paragraphs 20 and 21 held the following:

> *"20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically."*
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> *"21. Accordingly, we answer the reference by holding that Section 31 CrPC leaves full discretion with the court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the*

sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the court may direct. We also do not find any conflict in the earlier judgment in Mohd. Akhtar Hussain and Section 31 CrPC."

12. In our considered opinion, there is no infirmity in the order passed by the High Court. Accordingly, the appeal is dismissed.

………………………….J.
(INDIRA BANERJEE)

………………………….J.
(J.K. MAHESHWARI)

New Delhi;
July 05, 2022.