

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 589 OF 2008

- Nandu *alias* Nandlal Ahuja, S/o Late Nutan Das *alias* Nutan Mal Ahuja, age 34 years, resident of Baikunth Nagar, Camp-2, in front of Sahu Wooden Toll, Bhilai, District Durg (C.G.)

... Applicant

Versus

1. Pinki *alias* Raman Sahni, S/o Shri Suraj Prakash Sahni, age 53 years, resident of Camp-2, Thana – Chhawani, District Durg (C.G.)
2. State of Chhattisgarh, through – Police Outpost Chhawani, District-Durg (C.G.)

... Respondents

For Applicant	:	Mr. Rajendra Patel, Advocate, under instructions of Mr. Abdul Wahab Khan, Advocate.
For Respondent No.1	:	Mr. Pragalbha Sharma, Advocate, under instructions of Mr. Maneesh Sharma, Advocate.
For Respondent No.2	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

10/09/2015

1. I.A. No. 1 of 2008 has been filed to condone delay of 11 days in filing the revision application. I.A. No. 1 of 2015 has been filed for substituting the original Applicant since deceased by his brother stated to have also been injured in the incident.
2. After hearing the Counsel for the parties, both the I.A. applications are allowed.
3. The Applicant questions the acquittal of Respondent No.1 in Sessions Trial No. 132 of 2006 on the plea of alibi even while co-accused have been convicted under Sections 324/34, 325/34 and 452 IPC.

4. Referring to Section 401(5) Cr.P.C., Learned Counsel for the Applicant submits that in the interest of justice this Court can treat the application for revision as a petition of appeal and deal with it accordingly. The plea of alibi taken was frivolous and the Trial Court completely erred in granting acquittal on that basis even while on the same evidence the other co-accused involved in the assault with Respondent No.1 have been convicted.

5. Learned Counsel for Respondent No.1 has opposed the revision application submitting that no such leave can be granted at such belated stage under Section 401(5) Cr.P.C.

6. We have heard Learned Counsel for the State also.

7. Respondent No.1 is alleged to have been involved in the same incident with the co-accused. The co-accused have been convicted as noticed above. The Respondent has been given the benefit of doubt on the plea of alibi. The consideration on the acceptance of the plea for alibi is discussed. Any consideration of the same had to be in the appellate jurisdiction and not in the revisional jurisdiction. The revision application was filed as far back in the year 2008. It stood dismissed for non-prosecution on 29.7.2009 and was restored as late as on 6.3.2013 in Cr.M.P. No. 188 of 2013.

8. Keeping all aspects in mind including the nature of conviction of the co-accused, the indolence of the Applicant himself in having let the revision application be dismissed for non-prosecution in the year 2009 and then filing an application for restoration in the year 2013, we are not satisfied that the revision application was filed under erroneous belief that no appeal would lie against the acquittal, is sufficient explanation to interfere with the benefit of acquittal granted to Respondent No.1. The

reasons for not entertaining this application under Section 401(5) Cr.P.C. are attributable to the Applicant alone who ought to have been more vigilant in pursuing remedies properly and with diligence.

9. The revision application is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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