

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1039 of 2015

1. State of Chhattisgarh Through The Station House Officer, Police Station Hirri, District Mungeli Chhattisgarh.

---- Appellant

Versus

1. Victor Uchche S/o Mandwa Bachi Stevin Ozenkka, Age 34 years, R/o ABA, OBOHIA - 130 Nizeriya

---- Respondent

For Appellant – Shri Roshan Dubey, Panel Lawyer.

For Respondent – None, respondent not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgment on Board

16/09/2015

1. Heard on I.A.No.1/15 for condonation of delay in filing the instant criminal appeal and also heard on motion.
2. The State filed Criminal Case No.504/12 (State v. Victor Uchche) before the Chief Judicial Magistrate, Mungeli, C.G. As the matter was triable by the Court of Sessions, the Chief Judicial Magistrate, Mungeli committed the case to the Court of Sessions. Learned Additional Sessions Judge, Mungeli, C.G. received the case on transfer as Sessions Case No.34/2012 and framed charges under Sections 420, 467, 468, 471, 489—फ and 489—घ of the Indian Penal Code (in short 'the IPC') and under Section 3 read with Section 14 of the Foreigners Act, 1946 (in short 'the Act, 1946'). The respondent denied the charges and demanded the trial.
3. During the trial, the prosecution examined 12 witnesses. The statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short 'the Code') wherein he denied the circumstances appearing against him and pleaded innocence and false

implication in crime in question.

4. After providing opportunity of hearing to the parties, the learned trial Court convicted the respondent for the offence under Section 3 of the Act, 1946 and sentenced him to undergo rigorous imprisonment for 2 years, 5 months and 25 days along with fine of Rs.100/-, in default of payment of fine, to further undergo rigorous imprisonment for 15 days. The Court gave benefit of set off as the respondent was under trial prisoner from 20-06-2012 to 15-12-2014.

5. Against the impugned judgment passed by the trial Court, the appellant/State preferred a criminal appeal under Section 377 of the Code for enhancement of the sentence. Though in the prayer clause it is also prayed that the respondent be convicted under Sections 420, 467, 468, 471, 489-ग and 489-घ of the IPC but the instant criminal appeal has not been filed under Section 378(1) of the Code against the order of acquittal under Sections 420, 467, 468, 471, 489-ग and 489-घ of the IPC, the present appeal is for enhancement of the sentence only.

6. The present criminal appeal has been preferred after 178 days of its limitation. I.A.No.1/15 has been filed to condone the delay wherein it is mentioned that various procedure and formalities like recommendation for preferring the instant appeal and sanction were involved in the appeal, hence, there was delay. As the delay was for the reason that time consumed in complying the procedural formalities, it is prayed that the delay be condoned.

7. Also heard on motion.

8. Learned counsel for the appellant submitted that period of Visa ended on 26-10-2011 and till 19-06-2012, i.e., for a period about 7 months and 23 days, the respondent remained in the territory of India without any Visa; for

this act the trial Court erred for sentencing him as rigorous imprisonment for 2 years, 5 months and 25 days along with benefit of set off as the respondent remained as under trial prisoner during the trial. It is submitted on behalf of the appellant that for the grounds taken in the memo of appeal, the prayer made in this behalf regarding enhancement of the sentence and to convict the respondent wherein he was not found guilty as above-mentioned be allowed.

9. From perusal of the criminal appeal, it goes to show that the same has been filed under Section 377 of the Code and the same is for inadequacy of the sentence. The grounds mentioned in the criminal appeal go to show that the appellant had taken grounds against the acquittal of the respondent for the charges as mentioned above, but since the appeal is not filed under Section 378(1) against the acquittal, the same cannot be considered. Even otherwise, from perusal of the entire judgment passed by the trial Court, it goes to show the prosecution failed to prove the charges under Sections 420, 467, 468, 471, 489-ग and 489-घ of the IPC. Prima facie, the appellant failed to demonstrate any fact for admission of the appeal against the acquittal for the charges under Section 378(1) of the Code. In the considered view of this Court, as the appeal has been preferred under Section 377 of the Code, there is no criminal appeal under Section 378(1) of the Code and also upon perusal of the material the appeal fails to demonstrate prima facie material for admission against the judgment of acquittal, the appeal against the acquittal though not filed, but even upon consideration, not liable for admission against the judgment of acquittal passed for the charges abovementioned.

10. So far as consideration on motion for hearing this criminal appeal under Section 377 of the Code regarding inadequacy of the sentence passed by the trial Court is concerned, it goes to show that the respondent

remained within the territory of India for 7 months and 23 days without any valid Visa. As per the provisions of Section 3 read with Section 14A of the Act, 1946, stay in any area in India without valid documents, the concerned shall be punished with imprisonment for a term not less than 2 years, but may extend to 8 years and also be liable for fine. Looking to the period of stay unauthorizedly by the respondent in any area in India and the facts that minimum sentence for such offence provided by the legislature is two years which may extend to 8 years, the respondent was sentenced to undergo rigorous imprisonment for 2 years, 5 months and 25 days with benefit of set off under Section 428 of the Code and also looking to the period of detention of the respondent, I do not see any inadequacy in the sentence. The trial Court under lawful discretion has awarded the sentence which may not be held as arbitrary or inadequate looking to the period of stay.

11. On due consideration, I do not see any inadequacy for the sentence. The State had not challenged the acquittal of the respondent for the Sections mentioned above under Section 378(1) of the Code for no reason mentioned. I do not see any ground on which the instant criminal appeal may be held as a criminal appeal under Section 377 read with Section 378(1) of the Code. Also the instant criminal appeal has been filed after 178 days of its limitation and to answer the delay, procedural formalities and other circumstances are mentioned which do not satisfactorily explain the delay.

12. Consequently, the instant criminal appeal filed after 178 days of its limitation is hereby dismissed as barred by limitation and also as there is no sufficient ground for interference.

13. The instant criminal appeal dismissed summarily.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

