

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 684 of 2015**

Manoj Kumar Soni S/o Ganesh Prasad Soni, aged about 25 years, R/o Village – Chandni Chowk, Ambikapur, P.S. - Ambikapur, Civil & Revenue District-Surguja (CG)

---- **Petitioner****Versus**

State Of Chhattisgarh, through District Magistrate, Surguja, Distt.Surguja (CG)

---- **Respondent**

For Applicant	:	Mr.Awadh Tripathi & Mr.Wasim Miyan, Advocate
For Non-applicant	:	Mr.Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/09/2015**

1. Invoking revisional jurisdiction of this Court under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C."), the applicant herein has filed the instant criminal revision challenging the impugned judgment dated 11.8.2015 passed by the Third Additional Sessions Judge, Ambikapur, Surguja, in Criminal Appeal No. 28 of 2011 affirming the judgment of conviction and order of sentence dated 4.2.2011 passed by the Judicial Magistrate First Class, Ambikapur, in Criminal Case No.327/10, whereby the applicant has been convicted for commission of offence punishable under Section 224 of the IPC and sentenced to undergo rigorous imprisonment for six

months & fine of Rs.500/-, in default of payment of fine to further undergo simple imprisonment for one month.

2. Essential facts necessary for disposal of the revision are as under:

2.1 The applicant herein duly arrested was taken to the Court of the Judicial Magistrate First Class, Ambikapur in connection with Crime No.732/2009 for an offence punishable under Section 25 of the Arms Act on 2.11.2009 while he was being produced in custody after due arrest on 2.11.2009 at 4 p.m. and in custody he escaped out of the lawful custody. Pursuant to which F.I.R. Ex. P/1 was made and he was charge-sheeted for commission of offence under Section 224 of the IPC.

2.2 In order to bring home the offence, the prosecution examined as many as four witnesses and exhibited three documents. The applicant/accused pleaded not to be guilty and denied the charge levelled against him.

2.3 The trial Court by its judgment dated 4.2.2011 convicted the applicant for commission of offence under Section 224 of the IPC and sentenced as mentioned in para 1 of the order, which was affirmed in the appeal by the appellate Court, against which this revision has been preferred.

3. Mr.Awadh Tripathi and Mr.Wasim Miyan, learned counsel

appearing for the applicant would submit that conviction recorded by two Courts below holding the applicant guilty for an offence under Section 224 of the IPC is not only contrary to record, but is also perverse and therefore, it is liable to be set aside. He would alternatively submit that sentence prescribed for offence punishable under Section 224 of the IPC is two years, or with fine or with both. He would also submit that the applicant is in jail since 11.8.2015 and, therefore, the period already undergone by him should be held sufficient sentence against the sentence awarded by the two courts below and accordingly, the revision be allowed in part by modifying the sentence awarded.

4. On the other hand, Mr. Anant Bajpai, learned Panel Lawyer for the State would oppose the revision and submit that the judgment of conviction recorded and sentence awarded is based on evidence available on record and it is well merited judgment recorded by the trial Court and the appellate Court and as such, no interference is called for by this court in exercise of revisional jurisdiction. Therefore, the instant criminal revision deserves to be dismissed. On the question of sentence, he would submit that conduct of the applicant in escaping out of lawful custody, that too Court premises is extremely serious and therefore, no leniency should be shown towards the applicant in question of sentence.

5. I have heard learned counsel for the parties, perused the impugned judgment and records of both the courts below with utmost circumspection.

6. Two Courts below have clearly recorded the finding that on 2.11.2009 the applicant was taken to the Court of Judicial Magistrate First Class, Ambikapur along with Constable Vikram Kujur (PW-1) and Jitendra Gupta (PW-2) with due arrest in custody and at the time of his production from the court room, he escaped from the lawful custody and latter on he was arrested from Mission Hospital, Ambikapur. The trial Court has recorded the statements of eyewitnesses namely Vikram Kujur (PW-1), Jitendra Gupta (PW-2) and Sabina Toppo (PW-3) who were accompanying the accused to produce him before the said Court.

7. At this stage, it would be appropriate to notice Section 224 of the IPC, which states as under:-

224. Resistance or obstruction by a person to his lawful apprehension.- Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained or any such offence, shall be punished with imprisonment of either description for a term which may extent to two years, or with fine, or with both.

Explanation.-The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

8. Section 224, IPC has two distinct parts. The first relates to resistance to apprehension and the second part relates to escape from custody. In order to bring home the guilt of the accused under

first part, the prosecution is to prove the following ingredients:-

- (1) that the accused was charged or convicted;
- (2) that he offered resistance or obstruction to his apprehension;
- (3) that such resistance or obstruction was illegal; and
- (4) that the accused offered such resistance or obstruction illegally.

When the offence charged is that of escape or attempt to escape from custody, the prosecution is to prove the following:

- (1) that the accused was taken into custody for commission of an offence;
- (2) that such detention in custody was lawful;
- (3) that the accused escaped from such custody or made an attempt to do so; and
- (4) that the accused did so intentionally.

So, the essential ingredients for the second part of Sec.224, IPC are that the accused must have been detained in custody lawfully and that he escaped from such custody intentionally.

9. Admittedly, in the present case, the applicant was arrested on 2.11.2009 in connection with Crime No.732/2009 for an offence punishable under Section 25 of the Arms Act and was forwarded in custody to be produced before the Judicial Magistrate First Class, Ambikapur on 2.11.2009. Prosecution witnesses mainly the statements of police constables namely Vikram Kujur (PW-1),

Jitendra Gupta (PW-2) and Sabina Toppo (PW-3) would categorically show and clearly establishes that the applicant while in custody of the police authorities ran away from the custody and plea of the applicant that he has never escaped from the custody, but he left the place to see her aliaing sister at Mission Hospital, Ambikapur is not acceptable. Thus, facts and circumstance clearly establish that the applicant has escaped from lawful custody intentionally and therefore, finding recorded by two Courts below holding the applicant guilty for an offence under Section 224 of the IPC is well merited. I do not find any illegality in the same and it is hereby affirmed.

10. The determination of the quilt of the accused brings me to the question of reasonableness of sentence awarded by the Courts below.

11. Mr.AwadhTripathi, learned counsel for the applicant relying the decision of the Supreme Court in the matter of **Ajab and others v. State of Maharashtra**¹ and decisions of the High Court of Orissa in the matters of **Manjura Naik v. State**², **State of Orissa v. Purna Chandra Jena**³ would submit that the applicant is in custody now for almost one month and thus, ends of justice will be met if the period already undergone by him that is about one month be held sufficient.

12. Taking into consideration the facts & circumstances of the case and nature & gravity of the offence and also taking into consideration that date of occurrence is 2.11.2009 and the

1 1989 Supp (1) SCC 601

2 1995 CRI.L.J. 2765

3 2006 CRI.L.J.505

applicant has suffered the trauma of uncertainty arising out of his conviction by the trial Court as affirmed by the appellate Court and taking the note of the fact that the applicant is in jail since 11.8.2015, I am of the considered opinion that the ends of justice would meet if the substantive jail sentence, which the applicant has already undergone, is held sufficient.

13. As a fallout and consequence of the aforesaid discussion, the criminal revision is partly allowed. Conviction recorded by two Courts below under Section 224 of the IPC is hereby maintained. However, sentence awarded is reduced and instead of R.I. for six months, he is hereby sentenced to undergo imprisonment for the period undergone by him. The applicant is in jail. He be released forthwith, if not required in any other case.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-