

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.271 of 2009**

Vijay @ Baiga, S/o. Amarlal Jaisinghani, aged about 21 years,
R/o. Gali No.7, seema Nagar, Telibandha, Raipur, Tahsil &
District Raipur (CG)

----Applicant

Versus

State of Chhattisgarh, Through the District Magistrate, District
Raipur (CG)

---- Respondent

Shri Shivendu Pandya, counsel for the appellant.
Shri Lav Sharma, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****01.02.2016.**

The applicant has filed this revision under Section 379 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as he was convicted vide judgment dated 09.02.2009 passed by Judicial Magistrate First Class, Raipur in Criminal Case No.609/08 for the offence under Section 394 read with Section 34 of the Indian Penal Code along with other accused persons and sentenced them to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default of payment of fine, to undergo RI for six months.

2. The applicant along with other convicted co-accused persons had challenged the judgment of conviction before Sessions Judge Raipur. The Fourth Additional Sessions Judge, Raipur vide Judgment dated 21.4.2009 in Criminal Appeal

No.49/09 affirmed the judgment of conviction and affirmed the sentence passed by the trial Court for the present appellant and acquitted other convicted co-accused persons Kali @ Roshan Sindhi, Lalit Shendre and Banti @ Banshi Baghael. Against the judgment passed by the appellate Court the present applicant has preferred the instant criminal revision before this Court stating that the trial Court has erred in not appreciating the evidence in its right perspective thereby committed illegality and impropriety. Also the Sessions Court while affirming the judgment of conviction and sentence passed by the Judicial Magistrate First Class also not appreciated the evidence adduced by the prosecution. With the same set of evidence, other convicted co-accused were already acquitted by the Sessions Judge, nothing is seized at the instant of the present applicant, identification parade was suspicious and the same is not proved beyond probable doubt as he was shown to the witnesses prior to the test identification parade, hence, it is prayed that this revision may be allowed. Impugned judgment of sentence passed by the trial Court, affirmed by the appellate Court may be set aside.

3. Heard counsel for both the parties, perused the impugned order passed by the trial Court and the appellate Court.

4. Learned counsel for the applicant submits that as directed, he is not assailing the instant criminal revision on its merits regarding the judgment of conviction whereby and whereunder the applicant has been held convicted under Section 394 read with

Section 34 of the IPC. As instructed, he is confining his argument on the quantum of sentence passed by the trial Court. Learned counsel submits that during the trial and after pronouncement of the judgment passed by the appellate Court, the applicant was in jail for seven months and twenty one days in all. At the time of the incident, he was aged about 21 years, with no criminal antecedents. The incident is about 7 years 6 months old. As per the allegations, the looted property worth Rs.3400/- and two mobile sets, also not seized from the possession of the applicant, after the incident, he has not involved in any other criminal activities, he has deposited the entire fine amount, he be given opportunity to remain in the society to live as law abiding citizen. He further submits that the present applicant will not commit any offence in future and looking to the entire facts and circumstances, he may be sentenced for the period already undergone by him.

5. Per contra, counsel for the State opposed the arguments advanced on behalf of the applicant and submitted that the applicant was duly identified by the witnesses during test identification parade. Though nothing has been seized, his involvement in the crime was proved beyond all probable doubt and the court below rightly convicted and sentenced the applicant, hence, there may not be any scope for interference in the judgment of conviction and sentence passed by the trial Court and

upheld by the sessions Court, hence, the revision may be dismissed.

6. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence and other facts of the case.

7. Upon minute examination of the evidence of the complainant and other witnesses, their test identification parade and also as learned counsel for the applicant is not assailing the criminal revision regarding the judgment of conviction, this Court is of the view that the trial Court has not committed any illegality or impropriety for convicting the applicant and also the appellate court has not committed any error while affirming the judgment of conviction passed by the trial Court to the present applicant. Also the fine amount awarded to the applicant may not be termed as higher side. Consequently, judgment of conviction passed by the trial Court and fine sentence awarded by the trial Court and affirmed by the court of sessions on both the counts require no interference.

8. So far as quantum of substantive jail sentence are concerned, the co-accused persons were acquitted by the appellate Court as the prosecution failed to prove the offence against them. The present applicant was identified during test identification parade, though no articles or property has been seized at the instance of the applicant. The incident is 7 years and 6 months old. There is no criminal past recorded in the

charge sheet before the trial Court, the present applicant was aged about 21 years at the time of the incident, no any minimum sentence was prescribed for the offence, nothing is seized from the present applicant, he has served the sentence for about 7 months and 17 days during trial and also after pronouncement of the judgment by the appellate Court. Also looking to the worth of looted property, i.e. Rs.3400/- and two mobile sets and against nothing is seized from the applicant, in the considered view of this court for the substantive jail sentence awarded to the present applicant period already undergone by him would serve the purpose and it would be appropriate.

9. Looking to the entire facts and circumstances, judgment of substantive jail sentence passed by the trial Court and affirmed by the appellate Court requires interference. Consequently, the revision is partly allowed. Conviction of the applicant by the trial court, fine sentence awarded by the trial Court and affirmed by the appellate court is hereby maintained. However, substantive jail sentence awarded to the applicant is modified and instead of RI for three years, the applicant is sentenced to undergo for the period already undergone by him. The applicant is on bail. He be set at liberty forthwith. His bail bonds shall continue for further period of six months from today as per requirement of Section 437A of the Code.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE