

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.467 of 2014**

1. Bhogi Bhoy, S/o Late Jeevardhan Aged About 53 Years R/o Village Pusaur, Tah. And PS Pusaur, Civil And Rev. Distt. Raigarh C.G.
2. Ramchandra Bhoy S/o Late Jeevardhan Bhoy Aged About 40 Years R/o Sanjay Nagar, PS Chakradhar Nagar, Tah., Civil And Rev. Distt. Raigarh C.G.
3. Harishchandra Bhoy S/o Late Jeevardhan Bhoy Aged About 38 Years R/o Bargadh, PS And Tah. Bargadh, Civil And Rev. Distt. Bargadh (Odisha).

---- Applicants

Versus

- The State Of Chhattisgarh S/o Through The Distt. Magistrate, Civil And Rev. Distt. Raigarh C.G.

---- Respondent

For applicant	:	Shri Roop Naik, Advocate
For respondent	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****06.5.2016**

Heard.

2. The applicants have filed instant criminal revision under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as they were convicted by judgment dated 31.01.2014 in Criminal Case No. 10/2013. The Judicial Magistrate First Class, Raigarh convicted all the applicants for the offence under Sections 323, 323/34, 325, 325/34 and 451 of the Indian Penal Code. The trial Court acquitted all the applicants for the offence under Section 294 (two counts) and 506 Part II of the IPC by awarding them the benefit of doubt. All the applicants were sentenced by the trial Court with rigorous imprisonment for one year, RI for two months and RI

for six months with a direction to run all the substantive jail sentences concurrently. The trial Court also sentenced a fine of Rs.100/-, Rs.100/-, in default of payment of fine to further undergo additional imprisonment for one month and one month to each the applicants.

3. The applicants have challenged the judgment of conviction and sentence before the Additional Sessions Judge (FTC), Raigarh. The learned Additional Sessions Judge vide judgment dated 03.7.2014 in Criminal Appeal No. H 27/2014 allowed the appeal in part, affirmed the judgment of conviction passed by the trial Court and also affirmed the fine sentences awarded by the trial Court, modified the substantive jail sentence and instead of RI for one year awarded RI for one month, instead of RI for two months all the applicants have been sentenced to pay fine of Rs.200/- each in default of payment of fine, to further undergo additional imprisonment for 5 days and instead of RI for six months, the appellate Court awarded RI for 15 days and directed that all the above substantive jail sentence shall run concurrently. Against the order passed by the appellate Court, the applicants have preferred the instant criminal revision wherein it is submitted that the trial Court as well as the appellate Court erred in not appreciating the entire evidence in its right perspective, thereby committed illegality and infirmity. In absence of cogent and admissible evidence, the Court below convicted and sentenced the applicants and the appellate Court affirmed the judgment. The appellate Court was required to appreciate the entire evidence available on the record as there was no admissible evidence for conviction. The applicants were

convicted by the trial court and the appellate Court affirmed their conviction. Hence, it is prayed that the instant criminal revision may be allowed and the impugned judgment of conviction and sentence awarded by the trial Court, affirmed by the appellate court and the judgment of altered sentence awarded by the appellate court may be set aside.

4. Heard learned counsel for the parties and perused the judgment impugned of the trial Court as well as the appellate Court.

5. Learned counsel for the applicants submits that as instructed, he is not contesting the criminal revision on its merits regarding judgment of conviction passed by the trial Court, affirmed by the appellate Court and also he is not contesting the fine sentence awarded by the trial Court, affirmed by the appellate Court and also additional fine sentence awarded by the appellate Court. As instructed, they are contesting the instant criminal revision for the quantum of jail sentence only. Counsel for the applicants submits that the applicants are first offenders, the incident is about more than 9 years old, the applicants are not having any criminal antecedent, in a heated discussion, the present incident happened. The complainant was not suffered fracture of his bone, but it was dislocated only, they have deposited the entire fine amount, they remained in jail from 03.7.14 till 17.7.2014 whereby this Court has ordered for the suspension of the sentence and directed that they be released on bail. As directed, the applicants furnished bail bonds on 18.7.14 thereby served more than half of the substantive jail sentence awarded i.e. for 16 days. They have not committed any

offence even after the incident. They be sentenced for the period already undergone by them. As the Court below directed that all the substantive jail sentences shall run concurrently and all the applicants awarded substantive jail sentence of one month and 15 days to run concurrently. With this, they have served more than half of the sentence. Applicant No.1 was working as Village Health Coordinator and was retired from the service on 30.4.2016 and as the incident is not in relation with any of the professional ethics or during course of service. As the incident happened in the spur of moment, he was convicted with the aid of Section 34 of the IPC, hence, considering the entire circumstances sentence shall not affect the career and service of applicant No.1.

6. Per contra, counsel for the State/respondent opposed the arguments advanced on behalf of the applicants and submitted that the applicants assaulted the complainant after a tress pass. The appellate court very moderately sentenced the applicants looking to their act, hence, instant criminal revision may be dismissed on both the counts.

7. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution and other facts before the trial Court. Upon minute examination, I do not see any reason to interfere with the conviction awarded by the trial Court and affirmed by the appellate Court. Also the applicants are not assailing the instant criminal revision on the conviction part. Also I do not see any reason to interfere in the sentence of fine awarded by the trial Court and also affirmed and additionally

awarded by the appellate Court, the same cannot be held as excessive, hence the fine sentences altered by the Court below does not require any interference and the same are affirmed.

8. So far as the quantum of jail sentence are concerned, the incident is about more than 9 years old, all the applicants are first offenders. They have not committed any offence prior to the incident and as submitted they have not involved and not committed any penal offence after the incident, for the last 9 years they are contesting the matter before the trial Court, before the appellate court and also before this Court. Thereby they have tasted the sufficient post effect of the incident. Looking to the injuries sustained by the complainant and its effect as the applicants are sentenced RI for one month and RI for 15 days to each of the applicants with a direction that both the substantive jail sentences shall run concurrently and as the applicants served the sentence for 16 days thereby served more than half sentence, there is no any minimum sentence prescribed for the offence under Section 325 of the IPC and also Section 451 of the IPC. In the considered view of this Court, the sentence already undergone would serve the purpose and the applicants may be given opportunity to remain in the society without committing any offence. Also applicant No.1 is a retired Government employee. Looking to the circumstances under which the incident committed, period served by the applicants would be proper and appropriate.

9. Consequently, the instant criminal revision is allowed in part. Judgment of conviction passed by the trial Court, affirmed by the

appellate Court, fine sentence awarded by the trial Court affirmed by the appellate court, fine sentence for one more count additionally awarded by the appellate court are hereby affirmed. So far as substantive jail sentences are concerned, instead of RI for one month and RI for 15 days with benefit to run both the sentences concurrently is reduced and the applicants are hereby sentenced for the period already undergone by them.

10. All the applicants are on bail. They be set at liberty forthwith. The bail bonds furnished by the applicants shall remain in force for further six months as required under Section 437 of the Code.

11. So far as applicant No.1-Bhogi Bhoi is concerned, it is directed that the sentence awarded to him shall not effect the career and service in any manner .

12. Criminal Revision allowed in part.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**