

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 28 of 2016**

Rajesh Khare, aged 40 years, S/o Shri S.P. Khare, R/o Arya Colony,
Tifra Bilaspur, P.S. Sirgitti, Tahsil Bilaspur, Civil & Revenue District
Bilaspur.

---- **Petitioner** (Accused in Jail)

Versus

State Of Chhattisgarh Through P.S. Sirgitti, Bilaspur, Civil & Revenue
District Bilaspur, Chhattisgarh.

---- **Respondent/** Complainant

For the Applicant : Shri Mukesh Sharma, Advocate.
For the Respondent /State : Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****12/05/2016**

1. Heard on admission.
2. Facts in brief required for disposal of the instant criminal revision arising out of order dated 19.11.2015 passed in Criminal Case No. 957 of 2015 (State of Chhattisgarh vs. Rajesh Khare and Another) pending before the Judicial Magistrate, First Class, Bilaspur, Chhattisgarh against the present Petitioner and also another co-accused Rakesh Khare for the offence under Sections 270, 276, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code (for short 'the IPC') and also under Section 18 (b) of the Drugs and Cosmetics Act, 1940. The concerned Judicial Magistrate, First Class framed charges against the present Petitioner and thereafter, the prosecution filed an application under Section 323 of the Code of Criminal Procedure, 1973 (for short 'the Code') to commit the matter to the Court of Session for trial alongwith pending Sessions Case No. 34 of 2015. The Court below after hearing the said interim application held that as

two different trials against the accused cannot be held and as both the cases which are pending as sessions case and the present matter arise out of same incident, allowed the application under Section 323 of the Code and committed the said criminal case to be tried by the Court of Session.

3. Against the said part of the impugned order dated 19.11.2015, the Petitioner has filed the instant criminal revision under the provisions of Section 397 read with Section 401 of the Code for quashing the said order and to restore the trial before the trial Court at the stage from where the case was committed to the Court of Session.

4. The issue arises for consideration is with regard to maintainability of the instant criminal revision before this Court and whether after the order dated 19.11.2015 passed by the concerned Judicial Magistrate, First Class, Bilaspur, Chhattisgarh, the Petitioner is required to file a criminal revision under the provision of Section 397 of the Code before the Court of Session or the instant criminal revision is to be heard by this Court under the relevant provisions of Section 397 read with Section 401 of the Code.

5. Learned counsel for the Petitioner submits that as per the provision of Section 397 of the Code, he may approach either Court of Session or this Court for redressal of his grievances against the order passed by the Judicial Magistrate, First Class, Bilaspur and also as to how the Court of Session where itself the case was committed could hear the criminal revision in the matter.

6. The relevant provisions of Sections 397 and 401 of the Code of Criminal Procedure are as under:

“397. Calling for records to exercise powers of revision.-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

401. High Court's powers of revision.-

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any

person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

7. From perusal of the impugned order dated 19.11.2015, it appears that by committing the matter to the Court of Session under the provision of Section 323 of the Code the said Judicial Magistrate, First Class allowed the said application and committed the matter to be tried before the Court of Session. The bar as mentioned in Section 397 sub-section (2) of the Code is not applicable as for Section 397 of the Code the words “High Court or any Sessions Court” are mentioned. As per settled law and general interpretation, they are deemed to be as applicable only as the case may be it is not the case that the authority given to choose either of the forum since the order passed by the Court is the Court of Judicial Magistrate, First Class, which is judicially subordinate to the Court of Session and the matter in hand can only be filed before the Court of Session under the relevant provision of Section 397 of the Code for the purposes of correctness, legality, propriety of any finding arrived at in the order passed by the concerned Judicial Magistrate, First Class.

8. In the considered view of this Court, against the said order passed by the concerned Judicial Magistrate, First Class, the revision lies with the Court of Session and not before this Court.

9. With the above observations, this Court is of the view that the Petitioner ought to have filed the criminal revision before the Sessions Court and not before this Court.

10. Consequently, the instant criminal revision is disposed of in light of the above observations without any appreciation on its merits. The Petitioner is granted liberty to file an appropriate criminal revision before the Court of Session under the prevailing law.

Sd/-

Chandra Bhushan Bajpai
Judge