

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 55 of 2016**

1. Sanjay Pasi @ Golu S/o Jaysingh Pasi Aged About 24 Years R/o Lalkhadan Near Rly Fatak P.S. Torwa Tahsil Bilaspur Revenue & Civil District Bilaspur Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through : The P.S. City Kotwali, District Bilaspur Chhattisgarh

---- Respondent

For Applicant	:	Shri P.K. Tulsyan, Advocate
For Respondent/ State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03/03/2016**

1. Heard.
2. The instant Cr. Revision has been preferred within its limitation. It is admitted for consideration. Record of the Courts below is available.
3. It is submitted on behalf of the applicant that looking to the sentence and the period already undergone, the matter may be heard finally.
4. With the consent of both the parties, heard the matter finally.
5. The applicant has filed this Cr. Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in brevity the Code) as he has been convicted vide judgment dated 22.8.2015 by the Judicial Magistrate First Class, Bilaspur (CG) passed in Cr. Case No. 2062/2015. He has been convicted under Section 379 read with Section 34 IPC and

sentenced to undergo R.I. for 2 years. The trial Court has further directed that the period under which the applicant remained in jail i.e. 26.2.2015 till the date of judgment i.e. 22.8.2015 for 5 months and 24 days as set off, certificate under Section under Section 428 of the Code be issued. The applicant while continuous serving the sentence challenged the judgment of conviction and order of sentence passed by the concerned trial Court before the Sessions Judge, Bilaspur (CG). The Sessions Judge, vide judgment dated 7th December, 2015 in Cr. Appeal No.135/2015 affirmed the judgment of conviction and order of sentence passed by the trial Court. Against the order of the appellate Court, the applicant has preferred the instant Cr. Revision before this Court stating that the trial Court has erred in not appreciating the evidence in its right perspective and thereby committed illegality in convicting the applicant. Also in absence of trustworthy witnesses, the trial Court erred in holding him guilty. The appellate Court also failed to appreciate above facts. Hence, the revision may be allowed and the impugned judgment of conviction and sentence may be set aside.

6. Heard learned counsel for the parties.

7. Perused the judgment impugned of the trial Court as well as the appellate Court.

8. It is submitted on behalf of the applicant that as directed he is not contesting the instant revision on its merits for judgment of conviction under Section 379/34 IPC against him and he is confining his arguments on the quantum of sentence passed by the trial Court. It is submitted that from the date of arrest i.e. 26.2.2015 till date the applicant is in jail and thereby served more than $\frac{1}{2}$ of the sentence. The applicant is aged about 24 years with no criminal antecedents prior to registration of few criminal cases at a time. He be given an opportunity to remain in society as a law abiding

citizen. He will not commit any offence in future. There is no minimum sentence prescribed for the offence.

9. On behalf of the State/respondent, opposed the argument advanced on behalf of the applicant. It is submitted that the applicant is a habitual offender and more than one cases are registered against him though he is aged about 24 years only. Looking to his conduct for committing more than one offences, the trial Court has rightly convicted and sentenced the applicant and the sentence is adequate, hence, the revision may be dismissed.

10. In order to appreciate the arguments advanced on behalf of the parties, perused the evidence adduced by the prosecution and other facts of the case.

11. Upon minute examination, it appears that the applicant is not assailing the instant Cr. Revision regarding judgment of conviction passed by the trial Court and affirmed by the appellate Court. Also from the perusal of the evidence adduced by the prosecution before the trial Court, in the considered view of this Court, the trial Court had not committed any illegality or impropriety in convicting the accused/applicant under Section 379/34 IPC. Hence, the judgment of conviction requires no interference. The appellate Court has rightly affirmed the judgment of conviction.

12. So far as quantum of sentence is concerned though more than one criminal cases have registered of the like offence for theft of two wheelers and tried against the applicant looking to the age and other facts as also that the applicant is in jail since 26.2.2015 till date, it would be appropriate to grant an opportunity to the applicant so that he may live further in the society without committing any similar crime. Looking to the period already

undergone, the sentence served by the applicant would be the appropriate sentence for him.

13. Considering the facts and circumstances of the case, the judgments passed by the Courts below require interference on the point of sentence.

14. Consequently, the Cr. Revision is partly allowed. Conviction of the applicant under Section 379/34 IPC is hereby affirmed. However, the sentence awarded awarded to the applicant is modified and instead R.I. for 2 years, the applicant is sentenced for the period already undergone by him. It is stated that the applicant is in jail. He be released forthwith, if not required in any other case.

15. Certified copy within 3 days.

16. The applicant may submit a copy of this Order before the trial Court for further compliance.

17. Registrar (J) is also directed to send a copy of this order to the trial Court immediately.

18. The revision petition is partly allowed.

Sd/

(Chandra Bhushan Bajpai)
Judge