

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 488 of 2004**

Pintu @ Melaram son of Bhैया Lal by caste Yadav R/o. Karbala
Road, behind city dispensary P.S. City Kotwali, Bilaspur (CG)

---- Applicant**Versus**

State of Chhattisgarh, through District Magistrate, Bilaspur (CG)

---- Respondent

For applicant	: Ms. Sareena Khan, Adv. under instruction of Mr. M.K. Bhaduri, Adv.
For Respondent/State	: Ms. M. Asha, Panel Lawyer.

Order On Board**30/03/2016**

1. Facts of the case are that the applicant had been convicted vide judgment dated 14-6-2002 passed in Criminal Case No. 1566/94 by the Chief Judicial Magistrate, Bilaspur, CG for offence under Section 456 of the Indian Penal Code, 1860 (In brevity 'IPC') and sentenced to undergo RI For six month and to pay a fine of Rs. 100/-, in default of payment of fine to further undergo additional RI for 15 days. The applicant preferred an appeal being Cr.A. No. 199/2002 challenging the judgment of conviction and order of sentence dated 14-6-2002 before appellate Court/ 8th Additional Sessions Judge (FTC), Bilaspur. The appellate Court vide judgment dated 21-9-2004 affirmed the conviction under Section 456 of IPC and fine sentence awarded by the trial Court however modified the substantive jail sentence and instead of RI for six months, sentenced him to undergo RI for 4 months against which instant criminal revision has been filed by the applicant.
2. The applicant has preferred this revision on the ground that the trial Court has not appreciated the evidence in right perspective. The trial court even in absence of any trustworthy and admissible evidence convicted and sentenced the applicant and the same was affirmed by the appellate court. Hence by filing instant revision, it is prayed that

instant criminal revision may be allowed and the impugned judgment of conviction and sentence passed by the courts below be set aside.

3. Heard learned counsel for both the parties and perused the impugned judgment.
4. Learned counsel for the applicant submits that as directed, she is not contesting the instant criminal revision on its merit. She is confining her argument only on the quantum of sentence. Learned counsel would submit that the incident is about 22 years old. The applicant is first offender. He has deposited entire fine amount. He has no criminal antecedents. He remained in custody from 28-7-1994 to 23-8-1994 i.e for 27 days during trial as per para 15 of the judgment of the trial Court and also again remained in jail from the date of judgment of the appellate court on 21-9-2004 till 30-9-2004 when his sentence was suspended by this Court thereby more than a month and 7 days he has remained in custody. Looking to the entire facts, sentence of the period already undergone by him would serve the ends of justice. Hence the instant criminal revision may be allowed and the applicant be sentenced for the period already undergone by him.
5. Per contra, learned counsel for the State opposes the arguments advanced on behalf of the applicant and submits that looking to the offence committed by the applicant the trial Court as well as appellate court very moderately sentenced him and thus there is hardly any scope for any interference in the sentence part also and the revision may be dismissed for all counts.
6. Upon minute examination, whatever evidence adduced against the applicant before the trial Court goes to show commission of offence under Section 456 of the IPC by the applicant. The applicant is also not contesting instant criminal revision on conviction part of the judgment. He has also deposited the entire fine amount and not assailing the fine sentence. Therefore, the judgment of conviction and fine sentence awarded by the trial Court, affirmed by the appellate court requires no interference. So far as quantum of substantive jail sentence is concerned, considering the fact that the applicant has remained in jail for about 1 month and 7 days, he is the first offender, the incident is about 22 years old, he has no criminal antecedents and

also as submitted he is not involved in any criminal activities after this incident, he is facing trial and then prosecuting appeal and then revision for long 22 years, in the considered opinion of this Court, the period already undergone by the applicant would serve the purpose.

7. Consequently, looking the entire facts and circumstances, conviction of applicant under Section 456 of the IPC is affirmed and fine sentence of Rs. 100/- awarded by both the courts below is maintained. So far as substantive jail sentence is concerned, instead of RI for 4 months awarded by the appellate court, the applicant is sentenced to the period already undergone by him.
8. Applicant is on bail. He be set at liberty forthwith. His bail bond shall continue for a further period of 6 months as per requirement of Section 437-A of the Cr.P.C
9. Revision partly allowed.

Sd/-
(Chndra Bhushan Bajpai)
Judge