

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 305 of 2016**

1. Bharat Verma S/o Late Lakhan Lal Verma Aged About 34 Years R/o Khamhariya, Distt. Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Police Station Kumhari, Distt. Durg Chhattisgarh

---- Respondent

For Applicant	:	Shri Arvind Dubey, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****06/04/2016**

1. Learned counsel for the applicant submits that the incident is about 13 years old and the applicant is the first offender, a villager with no criminal *mens rea* and the incident developed on a sudden provocation. Looking to the entire facts, he is not assailing the instant Cr. Revision for the judgment of conviction, but confining the prayer on the quantum of sentence, hence, the matter may be disposed of at this stage.

2. Heard the matter finally.

3. The applicant has filed this Cr. Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short the Code) as the applicant was convicted vide judgment dated 27.4.2013 passed in Cr. Case No. 1841/2011 by the Judicial Magistrate First Class, Bhilai-3, District Durg (CG) whereby the concerned trial Court acquitted the applicant for the

offence under Section 294 IPC and convicted him under Sections 186 and 332 IPC and sentenced to undergo R.I. for 1 month and R.I. 3 months and fine of Rs. 200/- only, in default of payment of fine to further undergo S.I. for 10 days with a direction to run both the sentences concurrently.

4. The applicant challenged the said judgment before the 8th Additional Sessions Judge, Durg. The Additional Sessions Judge vide judgment dated 16.3.2016 in Cr. Appeal No. 86/2013 dismissed the appeal and affirmed the judgment of conviction and sentence passed by the trial Court. Against the said order, the applicant has preferred the instant Cr. Revision before this Court stating that the trial Court as well as the appellate Court have erred in not appreciating the evidence in its right perspective and thereby committed illegality and infirmity while convicting and sentencing the applicant and also in affirming the said conviction and sentence in absence of trustworthy witness. Both the Courts below have committed error by convicting the applicant, hence, by filing the instant Cr. Revision it is prayed that the revision may be allowed and the impugned order of conviction and sentence passed by the trial and affirmed by the appellate Court may be set aside.

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

6. Learned counsel for the applicant submits that as directed he is not contesting the instant Cr. Revision on its merits for judgment of conviction under Sections 186 and 332 IPC and also for the fine sentence awarded by the trial Court and affirmed by the appellate Court; as directed he is confining the argument on the quantum of sentence passed by the trial Court, affirmed by the appellate Court for the substantive jail sentence. The incident is 13 years old, the applicant is the first offender with no criminal background, he is

a rustic villager and he had faced the trial as well as Cr. Appeal for about 13 years, thereby, tested the post affect of the act committed by him. It is submitted on behalf of the applicant that the applicant has deposited the entire fine amount and he is in jail since 16.3.2016 till date, thereby, remained in custody by serving the sentence for 22 days till date. The Courts below directed to run both the substantive jail sentences concurrently. In fact, when the construction of road was going on, the applicant insisted the complainant, PW1, Sub-Engineer, Patan for making a speed breaker looking to the demand of the general public. During this submission, suddenly a duel verbal developed and he pushed the complainant to the road and thereby simple injury caused to the complainant. An abrasion over the lower lip and swelling and pain over the left thigh and waist were also caused. As the incident happened in a heat of passion. The applicant was not having any criminal *mens rea*. He simply pleaded for requirement of a speed breaker. He was not aware of the procedural formalities regarding construction of a speed breaker. As he enough tested the post affect of the said act, he may be given pardon and may be sentenced for the period already undergone by him. He will not commit any offence in future and even after the said incident he had not involved in any of the criminal activities.

7. Per contra, learned counsel for the respondent opposed the arguments advanced on behalf of the applicant and submits that the applicant having no authority insisted PW1, Sub-Engineer for making a speed breaker and when he denied for the same, the applicant assaulted the public servant engaged with the official duty. Looking to the entire act, the trial Court very moderately sentenced the applicant hence, the instant Cr. Revision requires no interference and the same may be dismissed as not maintainable.

8. To appreciate the arguments advanced on behalf of the parties, I have

perused the judgment passed by the trial Court as well as the appellate Court. The applicant is not assailing the instant Cr. Revision for judgment of conviction also the fine sentence awarded by the trial Court and affirmed by the appellate Court. From perusal of the order of trial Court and appreciation made by the appellate Court in the said judgment, this Court is of the considered view that there is no scope for interference for the judgment of conviction and fine sentence awarded by the trial Court, affirmed by the appellate Court. The same is hereby affirmed.

9. So far as quantum of substantive jail sentence is concerned, the applicant was sentenced for R.I. for 1 month and R.I. for 3 months with a direction to run the sentences concurrently. He is in jail since last 22 days. The incident is 13 years old. The applicant is a rustic villager with no criminal antecedent and as submitted he is not involved in any other criminal activities at the time of incident. He insisted for putting a speed breaker on the public road. When PW1, complainant/public servant denied for the same then both entered into a verbal duel and thereafter the heat of arguments suddenly raised and the applicant pushed the complainant, who received abrasion over the lower lip and also complained pain and swelling on the left thigh and waist. Besides this, no other injury has been sustained by the complainant. Looking to the entire facts, it would be appropriate to give an opportunity to the applicant so that he shall not repeat the same incident in future.

10. Consequently, the instant Cr. Revision is allowed in part. The judgment of conviction and fine sentence awarded by the trial Court, affirmed by the appellate Court are hereby affirmed. The conviction awarded to the applicant under Sections 186 and 332 IPC, R.I. for 1 month and R.I. for 3 months with a direction to run the sentences concurrently is reduced and instead the above substantive jail sentences are reduced to the period

already undergone by him. The applicant is in custody. He be directed to be released forthwith, if not required in any other case.

11. On behalf of the applicant copy of the judgment may be filed before the Court below for compliance.

12. The Registrar (Judicial) is also directed to send the copy of the order to the trial Court through usual and fax mode immediately.

13. The Cr. Revision is allowed in part.

Sd/

(Chandra Bhushan Bajpai)
Judge