

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 834 OF 2016

Santosh Devangan S/o Onkar Devangan Aged About 37 Years R/o Ward No. 10, Puran Bazar, Rajhara, P.S. Rajhara, District Balod Chhattisgarh.

... Applicant

Versus

State of Chhattisgarh Through : District Magistrate, Balod District Balod Chhattisgarh.

... Respondent

For Applicant.	:	Shri Jitendra Gupta, Advocate.
For Respondent-State	:	Shri Vaibhav A Gowardhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/09/2016

1. The present revision has been preferred challenging the judgment dated 27.07.2016 passed by the Sessions Judge, Balod in Criminal Appeal No.32/2016. Vide the said impugned judgment, the sessions court while deciding the appeal against the order of conviction under Sections 147,186 and 341/149 IPC sentencing the applicant till the arising of the court and fine of Rs.500/-, has set aside the said judgment dated 24.02.2016 passed by the Judicial Magistrate First Class, Dalli Rajhara, Distt. Balod in Criminal Case No.456/2016 and has remitted the matter back for fresh adjudication of the matter.
2. A perusal of order impugned shows that the order passed by the lower appellate court was on the ground that since the relevant questions under Section 313 CrPC was not put forth to the accused

persons and as such the prejudice has been caused to him and taking note of this fact, the court below has remitted the matter back to the trial court after setting aside the judgment of conviction and had directed the court below for re-examination of the witnesses at the stage of recording statement under Section 313 CrPC of the accused and thereafter to pass a fresh order.

3. The applicant is challenging the order of lower appellate court dated 27.07.2016 on the ground that firstly the court below did not have power to invoke the provisions of Section 386(b)(i) CrPC as the said provision is applicable in case where the proceedings under challenge was instituted under Section 377 CrPC or under Section 378 CrPC whereas, the case of the applicant was instituted under Section 374 CrPC before the lower court. Therefore, the court below has erred in invoking the said powers while remitting the matter back to the trial court for a fresh order.
4. Learned counsel for the State, to counter the said objection made by the counsel for the applicant, referred to decision of Supreme Court in case of **Nar Singh Vs. State of Haryana**, reported in 2014 AIR SCW-6495, where the relevant provisions of law in the context of specific provisions under Section 386 CrPC is as under:

“27. The point then arising for our consideration is, if all relevant questions were not put to accused by the trial court as mandated under Section 313 Cr.P.C. and where the accused has also shown that prejudice has been caused to him or where prejudice is implicit, whether the appellate court is having the power to remand the case for re- decision from the stage of recording of statement under Section 313 Cr.P.C. Section 386 Cr.P.C. deals with power of the appellate court. As per sub-clause (b) (i) of Section 386 Cr.P.C., the appellate court is having power to order retrial of the case by a court of competent

jurisdiction subordinate to such appellate court. Hence, if all the relevant questions were not put to accused by the trial court and when the accused has shown that prejudice was caused to him, the appellate court is having power to remand the case to examine the accused again under Section 313 Cr.P.C. and may direct remanding the case again for re-trial of the case from that stage of recording of statement under Section 313 Cr.P.C. and the same cannot be said to be amounting to filling up lacuna in the prosecution case.”

5. Likewise, the State has also relied upon the decision in case of **Mohd. Hussain alias Julfikar Ali Vs. State (Govt. of NCT), Delhi**, reported in 2012 AIR SCW-5210, wherein the Supreme Court earlier also on the same issue, has held in para-42 as under:

“42. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice..... Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.”

6. In view of law laid down by the Supreme Court in the aforesaid two judgments, this court is of the opinion that the objection raised by the counsel for the applicant is not sustainable and therefore, the same stands rejected. According to the Supreme Court, such power can be exercised under Section 386 CrPC irrespective of the provision under which the appeal shall be filed. So far as other facts are concerned, a perusal of impugned order clearly reflects and has

also been admitted by the counsel for the applicant also is that the facts pointed out by the revisional court in respect of non questioning properly while recording statement under Section 313 CrPC is concerned, is also not in dispute, and therefore, in the opinion of this court, the lower appellate court was justified in remitting the matter back to the trial court for a fresh adjudication of the matter from the stage of recording of statement under Section 313 CrPC with specific direction that the court below would put specific question as has been directed by the lower appellate court. Thus, no strong case is made out to interfere with the order impugned.

7. Accordingly, the revision fails and is dismissed.

**Sd/-
(P. Sam Koshy)
Judge**

inder