

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 774 of 2012**

1. Amrit Tirkey S/o James Tirkey Aged About 28 Years Occupation-
Agriculturist, R/o Ghutree, Police Station & Distt. Jashpur C.G.

---- Applicant

Versus

1. State Of Chhattisgarh S/o Through - P.S. Jashpur , Distt. Jashpur C.G.

---- Respondent

For Applicant	:	Shri I. Lakra, Advocate
For Respondent/ State	:	Smt. M. Asha, Panel Lawyer

Applicant- Amrit Tirkey is present in person.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

17/03/2016

1. With the consent of the parties, heard the matter finally.
2. The applicant had filed the instant Cr. Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for brevity the Code). The applicant has been convicted vide judgment dated 26.9.2012 passed in Cr. Appeal No. 32/2012 by the Sessions Judge, Sessions Division, Jashpur (CG) under Section 5 read with Section 10 of the Chhattisgarh Agricultural Cattle Preservation Act, 2004 (for brevity the Act of 2004) and sentenced to undergo R.I. 1 year and fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 3 months. The Court below dismissed the appeal preferred on behalf of the State regarding other co-accused persons namely- Maksi Miliyanus Tirky, Vijay Kumar Tirky and Nirdosh Kujur. The said Cr. Appeal preferred was on behalf of the State as the Chief Judicial Magistrate, Jashpur, District Jashpur (CG) in Cr. Case No.390/2010 while judgment dated 29.12.2011 acquitted the present applicant and other co-accused

aforementioned for the charges under Section 153 A of the IPC and Sections 4, 5 read with Section 10 of the Act of 2004.

3. The applicant against the judgment passed in the said Cr. Appeal, preferred the instant Cr. Revision stating that the learned appellate Court has erred in not appreciating the evidence in its right perspective, thereby, committed illegality and impropriety while reversing the judgment passed by the trial Court. In absence of any admissible fact the appellate Court had wrongly appreciated and convicted the present applicant, hence, it is prayed that the instant revision may be allowed and the impugned order of conviction and sentence passed by the appellate Court may be set aside.

4. Heard learned counsel for both the parties.

5. Learned counsel for the applicant submits that as instructed, he is not contesting the revision on its merits for the judgment of conviction under Section 5 read with Section 10 of the Act of 2004, but he is confining his arguments on the quantum of sentence only. It is submitted that the present applicant has deposited the entire fine amount as directed by the appellate Court and he had served the sentence as per certificate given under Section 428 of the Code from 25.12.2007 till 3.3.2008 and thereby served the sentence for 2 months and 9 days. Thereafter, after the impugned judgment dated 26.9.2012 he remained in jail by serving the part of the sentence until he gets the order of suspension and grant of bail by this Court dated 4.12.2012 and ultimately, in compliance of the said order he had furnished the bail bond on 27.12.2012, thereby, he further remained in jail for 3 months and 1 day. Again after a breach committed regarding non-appearance, he remained in jail from 13.3.2013 till 18.3.2013 i.e. for 6 days. With this, the present applicant served the sentence for 5 months and 16 days. The incident belongs to about 9 years old. The applicant is the first offender, aged about 28 years at the time of incident with no

previous criminal antecedents. Till 24.12.2007, the applicant was contesting the matter before the trial Court, appellate Court and also before this Court, thereby sufficiently tested the post effect of the incident. Looking to the facts and circumstances of the case, he may be sentenced for the period already undergone.

6. Per contra, learned counsel for the respondent/State opposed the arguments advanced and submitted that as the possession of beef is prohibited, the applicant was found in possession of the said beef under definition clause Section 2 (c) of the Act of 2004. Looking to the act, the appellate Court has rightly convicted and sentenced the applicant, hence, the revision may be dismissed on both the counts.

7. To appreciate the arguments advanced in this behalf, perused the evidence adduced before the trial Court, impugned judgment of the trial Court and also of the appellate Court.

8. From perusal of the evidence adduced by the prosecution before the trial Court, in the considered view of this Court, the appellate Court has not committed any illegality or impropriety in holding that the present applicant found in possession of "Beef" as per the definition clause Section 2 (c) of the Act of 2004, which is prohibited under the provisions of Section 5 of the Act of 2004 and punishable under Section 10 of the said Act. Also, the instant Cr. Revision is assailed on the conviction part. In the considered view of this Court, judgment of conviction of the appellate Court for the applicant under Section 5 read with Section 10 of the Act of 2004 requires no interference. The applicant has deposited the entire fine amount and remained in jail by serving the part of the sentence for 5 months and 16 days, thereby completed about ½ of the substantive jail sentence imposed upon the applicant.

9. Looking to the age and the fact that he is the first offender with no previous criminal antecedents shown in the charge sheet; the incident is about 9 years old, in

the considered view of this Court, the period already undergone would serve the ends of justice.

10. On due consideration, the revision preferred on behalf of the applicant is allowed in part. The judgment of conviction and sentence of fine awarded by the appellate Court is hereby affirmed. However, the substantive jail sentence of R.I. for 1 year is hereby reduced to the period already undergone. It is stated that the applicant is on bail. He be set at liberty forthwith. The bail bonds furnished shall continue for a further period of 6 months as required under Section 437-A of the Code.

11. The revision is partly allowed.

Sd/-

(Chandra Bhushan Bajpai)
Judge