

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 483 of 2015

1. Amit Kataria S/o Shri Indar Singh Kataria, aged about 36 years, Collector, Jagdalpur, District Bastar (Chhattisgarh)
2. Ajay Yadav S/o Shri Devendra Yadav, aged about 38 years, Superintendent of Police, Jagdalpur, District Bastar (Chhattisgarh)
3. Hemant Kashyap S/o Late Shri A. S. Kashyap, aged about 59 years, Regional Transport Officer, Jagdalpur, District Bastar (Chhattisgarh)
4. Shaqueel Ahmed S/o Late Shri Peer Mohammad, aged about 62 years, Government Pleader, District & Sessions Court, Jagdalpur, District Bastar (Chhattisgarh)

---- Petitioners

Versus

1. Sanjeev Kumar Tamak, Second Additional Sessions Judge, Jagdalpur, District Bastar (Chhattisgarh)

---- Respondent

For Petitioners – Shri S.C.Khakhariya, Deputy Advocate General.
For Respondent – None, not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

06/04/2016

1. Heard I.A.No.3/2016 for taking documents on record.
2. On due consideration, the same is allowed and the documents annexed along with the said interim application are taken on record if otherwise admissible in the matter.
3. Heard the matter finally at the motion stage itself.
4. Brief facts required for disposal of the instant WP(227) are that Criminal Appeal No.5/2015 arising out of the judgment passed by the Judicial Magistrate Second Class, Jagdalpur in Criminal Case No.1290/2014 vide judgment dated 19-01-2015 whereby and whereunder the appellant/accused was held convicted for the offence under Sections 279 and 338 of the IPC and sentenced to undergo simple imprisonment for three months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo additional simple imprisonment for 10 days, simple imprisonment for three months and also to pay fine of Rs.500/-, in default of payment of fine, to further undergo additional

simple imprisonment for 10 days, was preferred by appellant/accused Samvel Tirki. The said appeal was pending before IInd Additional Sessions Judge, Bastar at Jagdalpur. An application for transfer of the said criminal appeal was preferred under Section 408 read with Section 407(3) of the Code of Criminal Procedure, 1973 (in short 'the Code') before the Sessions Judge, Bastar at Jagdalpur. On the basis of the content made therein, the learned IInd Additional Sessions Judge, Jagdalpur vide order dated 17-06-2015 held that contents of the said transfer petition is a criminal contempt for the said Court under the provisions of Section 2(c) of the Contempt of Courts Act, 1971 (in short 'the Act, 1971) and the same is to be heard and disposed of with Section 10 read with Section 15(2) of the Act 1971. After appreciating the said, the learned Second Additional Sessions Judge issued notice to the contemnors mentioned in the order dated 17-06-2015, i.e., all four petitioners of the present petition and one another who has not preferred any petition before this Court. After the show cause notice, all four petitioners submitted the reply of the said show cause. After perusal of the said reply the matter was adjourned for filing reply by way of affidavit and on consideration their reply so filed for holding preliminary enquiry. Against the impugned order, the present petitioners had filed the instant WP(227) therein it is submitted that the order passed by the Court below is illegal, bad in law without jurisdiction, hence, the aforementioned order be quashed as they have not committed any criminal contempt of the appellate Court.

5. Learned counsel for the petitioners supported the entire grounds taken in the instant WP(227) and submitted that impugned order passed by the appellate Court is illegal, bad in law, without jurisdiction as the petitioners had not committed any criminal contempt as defined, they simply placed the facts before the Sessions Judge on the basis of the entire proceedings earlier conducted in the matter, under the provisions of law; as they have not committed any criminal contempt, the instant WP(227) may be allowed and the

impugned orders dated 17-06-2015 and 29-06-2015 and the entire proceedings in continuance of above orders may be quashed.

6. To appreciate the arguments advanced in this behalf, the instant WP(227), orders dated 17-06-2015, 29-06-2015, and the orders and appreciation of the appellate Court, order dated 31-03-2015, 10-04-2015, 14-05-2015 and 15-05-2015 are perused. Also contents of the prayer as made before the Sessions Judge regarding transfer of the said criminal appeal are perused.

7. Upon perusal of the entire material available, in the considered view of this Court, the petitioners had not committed anything which comes under the ambit of Section 2(c) of Act 1971. Looking to the entire facts as aforementioned, since the petitioners have not committed any act which could lead them for anything which could be covered by Section 2(c) of the Act 1971, the orders and the appreciation passed by the learned appellate Judge are illegal, bad in law, without any jurisdiction, biased and also beyond jurisdiction and authority and duties as given under the law.

8. With the above, the instant WP(227) succeeds thereby orders passed by the appellate Court dated 17-06-2015 and 29-06-2015 are hereby quashed and also the entire proceeding in connection with those orders are quashed. Copy of this order be sent to the concerned presiding officer for information and not to commit above arbitrary act in future.

9. Parties may file copy of the order before the Court below for further compliance.

10. The petition allowed.

11. No order as to cost.

12. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE