

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 56 of 2016**

1. Ku. Rajula Pudo D/o Mainuram Pudo Aged About 19 Years R/o Pittepulchur, P.S. Lohattar Distt. Uttar Bastar Kanker Chhattisgarh.
2. Isuram Pudo S/o Durjanram Pudo Aged About 22 Years R/o Dargarh, P.S. Durgukondal, Distt. Uttar Bastar Kanker Chhattisgarh.
3. Arun Potai S/o Asiram Potai Aged About 22 Years R/o Konde, P.S. Durgukondal, Distt. Uttar Bastar Kanker Chhattisgarh.

---- Applicants**Versus**

State Of Chhattisgarh Through Police Station Bhanupratappur,
Distt. Uttar Bastar Kanker Chhattisgarh.

---- Respondent

For the Applicants	:	Smt. Indira Tripathi, Advocate.
For the Respondent/State	:	Shri Lav Sharma, Panel Lawyer on advance copy.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****15/03/2016**

1. Heard.
2. Issue notice to the Respondent.
3. Shri Lav Sharma, Panel Lawyer accepts notice on behalf of the State/ Respondent.
4. The instant criminal revision has been preferred within its limitation. It is admitted for consideration.
5. Records of the Courts below are available.
6. It is submitted on behalf of the Applicants that looking to the nature of the offence, quantum of sentence, age of the Applicants and that no

criminal antecedents have been shown against them in the trial Court, the matter may be disposed of finally.

7. With the consent of both the parties, the matter is heard finally.

8. The Applicants have filed the instant criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the judgment dated 13.1.2016 passed by the Additional Sessions Judge, North Bastar Kanker (Chhattisgarh) in Criminal Appeal No. 41 of 2015 whereby the Appellate Court affirmed the judgment of conviction and sentence passed by the Court below i.e. Chief Judicial Magistrate, North Bastar Kanker, Chhattisgarh modified the conviction from Section 363(A) read with Section 34 of the Indian Penal Code (for short 'the IPC') to Section 363 read with Section 34 IPC. The trial Court has convicted the Applicants under Section 363(A) read with Section 34 of the Indian Penal Code by judgment dated 3.12.2015 in Criminal Case No. 319 of 2015 and sentenced them to undergo rigorous imprisonment for three years and to pay fine of Rs.300/- in default of payment of fine to further undergo additional RI for two months to each of the Applicants.

9. The Applicants have filed the instant criminal revision before this court stating that the trial Court has erred in not appreciating evidence in its right perspective thereby committed illegality and impropriety. In absence of any substantial evidence, the Appellate Court too committed an error by affirming the judgment of conviction and sentence and failed to appreciate that intention of the Applicants was *bona fide* though without intimating the lawful guardian of minor they took the said minor

alongwith them to Raipur. Hence, it is prayed that looking to the entire facts, as the trial Court has wrongly appreciated the entire evidence and the Appellate Court also failed to appreciate the same in its right perspective, the instant revision may be allowed and the impugned judgment of conviction and sentence may be set aside.

10. Heard counsel for the parties and perused the judgment of the trial Court as well as that of the Appellate Court and also perused the evidence adduced by the parties before the trial Court.

11. Learned counsel for the Applicants submitted that as instructed she is not assailing the instant criminal revision on its merits against the judgment of conviction under Section 363 read with Section 34 of the IPC and she is confining her arguments only to the quantum of sentence awarded by the trial Court.

12. Learned counsel for the Applicants would submit that all the Applicants are in jail since 27.2.2015. Thereby, they have served the sentence for about 1 year 18 days till today. They are the first offenders. All the Applicants are aged about 19 years, 22 years and 22 years, respectively. No any criminal antecedents have been shown or reported in the trial before CJM, North Bastar Kanker. No minimum sentence is prescribed for the alleged offence. They had *bona fide* taken the minor alongwith them to Raipur. They may be given an opportunity so that they may remain in the society without committing any offence again. Looking to the facts, their age and that they are the first offenders and are in jail

since 1 year 18 days as well as they have deposited the entire fine amount, they may be sentenced for the period already undergone by them.

13. Per contra, Learned State counsel opposed the arguments advanced on behalf of the Applicants and submitted that the Applicants, without obtaining consent from the lawful guardian of the minor and without any intimation to anybody, took the minor alongwith them to Raipur. The trial Court duly appreciated the entire evidence and convicted the Applicants for the offence under Section 363(A) read with Section 34 of the IPC for kidnapping the minor for purpose of begging. Since the fact regarding purpose of kidnapping was not proved by the prosecution, the Appellate Court modified the conviction only from 363-A read with Section 34 IPC to Section 363 read with Section 34 of the IPC and affirmed the sentence passed by the trial Court. The Courts below have not committed any illegality and impropriety in convicting the Applicants for the offence they committed. Hence, as the sentence awarded is proper and adequate, there is no scope for interference with the order of sentence passed by the Courts below. Hence, the revision may be dismissed.

14. On a close scrutiny of the evidence, it appears that the element of the purpose of begging was not duly proved by the prosecution before the trial Court, therefore, the Appellate Court rightly modified the conviction from Section 363(A) read with Section 34 of the IPC to Section 363 read with Section 34 of the IPC.

15. From perusal of the entire material available on record, it goes to show that so far as kidnapping of the minor and taking her to Raipur without obtaining any consent is concerned, the same is an offence and the Court below has rightly convicted the Applicants therefor under Section 363 read with Section 34 of the IPC. Hence, the conviction as modified by the Appellate Court requires no interference and the Applicants are also not assailing the judgment of conviction.

16. Even otherwise, the prosecution has duly proved the offence committed by the Applicants under Section 363 read with Section 34 of the IPC. So far as quantum of sentence passed against the Applicants is concerned, the Applicants are the first offenders. They are the residents of close vicinity. The Applicants are hardly literate and are known to the complainant i.e. mother of the minor. All the Applicants are in jail since 1 year 18 days till today. They have no criminal antecedents prior to the present offence and at the time of offence, they were aged about 19 years, 22 years and 22 years, respectively.

17. Looking to the entire facts and evidence and the fact that no minimum sentence is prescribed for the offence under Section 363 of the IPC, this Court is of the considered view that the Applicants should be given an opportunity and sentencing them for the period already undergone by them would serve the interest of justice.

18. On due consideration, the judgment of conviction passed against the Applicants for the offence under Section 363 read with Section 34 of the IPC requires no interference and as such, the same is affirmed. So far as the quantum of sentence is concerned, instead of sentencing the

Applicants with RI for three years, they are sentenced for the period already undergone by them. Fine sentence awarded by the Courts below is hereby affirmed. It is stated that the Applicants are in jail. They be released forthwith if the amount of fine imposed upon them has been deposited and if not required in any other case.

19. The criminal revision is partly allowed.

20. Certified copy of the order as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE