

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.237 of 2016**

Deepak Netam, S/o. Shyamu Netam, aged about 21 years, R/o. Near Ashish Kirana Stores, Gtutam Nagar, PS Supela, Tahsil and District Durg (CG)

---- Applicant

Versus

The State of Chhattisgarh through District Magistrate Durg District Durg (CG)

---- Respondent

Shri Uttam Pandey, counsel for the applicant.
Shri Lav Sharma, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****16.3.2016.**

The applicant has filed instant criminal revision under Section 397/401 of the Cr.P.C. as he was convicted by judgment dated 26.3.2014 in Criminal Case No. 402/2013 for the offence under Section 354 of the Indian Penal Code and sentenced to undergo imprisonment for six months and to pay fine of Rs.500/-, in default of payment of fine, to further undergo imprisonment for twenty days. Against the said judgment, the applicant has preferred Criminal Appeal No.84/2014 before Third Additional Sessions Judge, Durg and the learned Additional Sessions Judge vide judgment dated 11.02.2016 dismissed the appeal and affirmed the judgment passed by the trial Court.

2. Against the said judgment, the applicant has preferred the instant criminal revision stating that though there was no clinching

evidence against the applicant, the trial Court erred in not appreciating the variation in the statement of the prosecutrix and thereby not appreciated the entire evidence in its right perspective, convicted the present applicant. The appellate Court also not considered the above material available in the evidence and affirmed judgment passed by the trial Court. It is prayed that the instant revision may be allowed and the impugned judgment may be set aside.

3. Heard learned counsel for the parties.

4. Learned counsel for the applicant submits that as instructed, he is not assailing the criminal revision on its merits regarding judgment of conviction. On the other hand, he is pressing the instant revision only on the point of quantum of sentence. He would submits that the applicant was aged about 21 years at the time of the incident, the prosecutrix (name not mentioned) (PW-3) was also major. As per the facts appeared in the trial, the applicant caught hold the hands of the prosecutrix and said "I love you" and both were known earlier. The applicant has no criminal antecedent. Looking to the age of the applicant, he may be given opportunity so that he may remain in the society without crossing his limits for committing any offence, he has not used any criminal force more than what surfaced during trial. He is in jail since 11.02.2016 thereby he has served already the sentence for 35 days, there is no minimum sentence prescribed, hence, the applicant may be given an opportunity. The period

already undergone would serve the purpose looking to the entire facts and circumstances of the case.

5. On the other hand, learned State counsel opposes the arguments advanced by learned counsel for the applicant and submits that as per the facts of the case, when the prosecutrix (PW-3) was standing in front of her house, the applicant used criminal force with intend to outrage her modesty by holding her hands and also said that “I love you”, which goes to show that to outrage the modesty of the prosecutrix, he deliberately committed this act. Looking to the entire facts and circumstances, sentence awarded to the applicant is adequate, hence the criminal revision may be dismissed on both the counts.

6. Perused the judgment impugned of the trial Court as well as the appellate court.

7. As the applicant is not assailing the instant criminal revision regarding the conviction under Section 354 of the IPC by the trial Court and affirmed by the appellate Court, also as per the appreciation of both the Courts, I do not see any illegality or impropriety in the conviction part awarded to the applicant. Hence, the judgment of conviction by the trial Court and affirmed by the appellate court require no any interference.

8. So far as the quantum of sentences are concerned, the applicant was aged about 21 years at the time of the incident with no criminal past, the prosecutrix was also major at the time of the incident, extend of criminal force used by the applicant goes to

show that though he has committed the offence, beyond the above act, he has not proceeded further as there was no one to restrict for any furtherance of the Act. He is in jail for about 35 days, looking to the entire facts it would be appropriate to grant him an opportunity by sentencing him for the period already undergone by him. Also as submitted, the applicant has deposited the fine amount.

9. Looking to the entire facts and circumstances, judgment of conviction passed by the trial Court, fine sentence awarded by the trial Court, affirmed by the appellate Court requires no interference, hence both are affirmed.

10. So far as the quantum of sentences regarding substantive jail sentences are concerned, looking to the fact that the applicant is in jail since 11.02.2016 (35 days), instead of sentence of six months the same is reduced for the period already undergone by him. It is informed that the applicant is in jail, he be set at liberty forthwith if not required in any other case after realization of fine amount.

11. On perusal of the para 16 of the judgment passed by the trial Court goes to show that the trial Court sentenced the applicant for six months, but the Court below has not specified regarding nature of the sentence, i.e. simple imprisonment or rigorous imprisonment. The trial Court is directed not to repeat this in future and whenever the accused is convicted it shall be the

lawful duty of the trial Court to specify in which category the trial Court convicted the accused.

12. Criminal Revision allowed in part.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

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