NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 938 OF 2016

Abu Obaid Lari son of late M.F. Lari, aged about 49 years, resident of Jhindi Dafai, Ward No.8, North Jhagrakhand, Tahsil Manendragarh, District Korea (CG).

… Applicant

Versus

State of Chhattisgarh through the District Magistrate, District Korea (Station House Officer, Police Station, Manendragarh, District Korea) (CG).

… Respondent

For Appellant	:	Shri Anil Gulati, Advocate.
For Respondent	:	Shri Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04.10.2016

1. The present revision petition has been preferred against the order dated 24.06.2016 passed by the IInd Additional Sessions Judge, Manendragarh, District Korea in Criminal Appeal No.52 of 2013.

2. The admitted facts in the instant case is that on 06.08.2010 the mother of the complainant namely Sulochana Tiwari met with an accident with Marshal Jeep bearing registration No.MP-19-S-1546 which was being driven by the applicant rashly and negligently at time of accident. In the said accident, Sulochana Tiwari sustained injuries. Police case was registered against the applicant and he was subjected to trial for the offence punishable under Sections 279 and 338 IPC.

3. The trial court vide its order dated 27.07.2013 found the applicant guilty and sentenced him to three months' imprisonment with fine of Rs.500/- under Section 338 IPC and till rising of the court with fine of Rs. 500/- under Section 279 IPC with default stipulation for both the offences.

4. The said order dated 27.07.2013 was subjected to challenge by way of Criminal Appeal No.52 of 2013.

5. Pending the appeal before the lower appellate court, the complainant and the applicant both entered into compromise/ settlement. On the basis of said compromise, the court below partly allowed the appeal and acquitted the applicant for the offence under Section 338 IPC, however, taking into consideration the rise in road accident in the recent times, the court did not accept the compromise so far as offence under Section 279 IPC is concerned and as such, maintained the conviction and sentence of the applicant for the offence under Section 279 IPC i.e. till rising of the court. It is this order which is under challenge in this revision.

6. Counsel for the applicant submits that since the parties have amicably settled the dispute and they have entered into a compromise, the lower appellate court should have modified the order of conviction of the applicant and should have converted it into an order of acquittal as the court below had already compounded the offence under Section 338 IPC. It was also submitted that once the matter has been resolved and the applicant

had been acquitted for the offence under Section 338 IPC, the applicant should not have been convicted for the offence under Section 279 IPC. It was also contended that in case if the order of conviction is not set aside, the said conviction of the applicant under Section 279 IPC may have adverse impact in his service career as there is possibility of his being subjected in departmental proceedings.

7. Having heard the counsel for the applicant this court is of the opinion that the very fact that the applicant and the complainant had settled/compromised the matter outside the court itself is an admission on the part of the applicant of an accident having occurred and the complainant sustaining injuries. In the light of the said admission on his part so far as complainant sustaining injuries by virtue of the accident which took place while the applicant was driving the vehicle is sufficient for the lower appellate court to maintain the order of conviction under Section 279 IPC. Even otherwise, once when there is an admission, the applicant cannot be let off even if there is compromise as the charge against him was driving the vehicle rashly and negligently in the public road an which otherwise has the interest of the general public at large.

8. Thus, the order of lower appellate court does not warrant any interference for the simple reason that the court itself has given the minimum sentence which could have been granted i.e. till rising of court and with fine of Rs. 500/-.

9. In the admitted facts of compromise being entered into between the parties, the accident as well as complainant sustaining injuries stand established and in the said factual background, it cannot be said that the applicant could be acquitted from the charge itself.

10. On the basis of compromise all that which could be done is that the appeal could be disposed of instantaneously and the major conviction for the offence under Section 338 IPC having been set aside, the conviction for the offence under Section 279 IPC so far as the rash and negligent driving which stands confirmed on compromise being entered into between the parties, does not call for any interference.

11. So far as adverse impact on the service career of the applicant if his being convicted under Section 279 IPC is concerned, it is an issue which cannot be dealt with by this court hearing the revision petition against the order of conviction. Even otherwise, in the opinion of this court, order of conviction under Section 279 IPC does not fall within the act of moral turpitude.

12. For the foregoing reasons, this court is of the opinion that no strong case has been made out by the applicant calling for interference with the order impugned. As a fallout and consequence of the above discussion, the revision petition fails and is accordingly dismissed. No order asto costs.

Sd/-
(P. Sam Koshy)
JUDGE

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