

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 360 of 2004

Order reserved on : 09.03.2017

Order passed on : 07.04.2017

- Manish @ Maniram Dhimar, s/o Harkhu Dhimar, aged 27 years, resident of Gundrupara, Mahasamund, Thana and District Mahasamund (CG) ---- **Applicant**

Versus

- The State of Chhattisgarh, through the District Magistrate Mahasamund (CG) ---- **Respondent**

For Applicant : Smt Indira Tripathi, Advocate
For Respondent/State : Smt Smita Ghai, PL

Hon'ble Shri Justice Anil Kumar Shukla

CAV Order

1) This revision petition has been filed against the judgment dated 16.06.2004 passed by the Second Additional Sessions Judge, Mahasamund in Criminal Appeal No. 338 of 2003, whereby the learned Additional Sessions Judge has confirmed the judgment dated 31.10.2003 passed by the Chief Judicial Magistrate, Mahasamund in Criminal Case No. 732 of 2001 convicting the applicant for the offences punishable under Sections 457 and 354 of IPC and sentencing him to undergo six months' rigorous imprisonment with fine of Rs.200/- and three months' rigorous imprisonment respectively, with default stipulation. The applicant has already paid the fine amount imposed upon him in the trial Court itself.

2) The prosecution case in brief is that on 16.11.2001 in the night at 9.30 pm complainant- Sangeeta, along with her husband and children was sleeping inside their house casually leaving the doors open and went into deep slumber. At that moment, present applicant with bad intention came inside the house covertly and tried to molest her. She woke up freakishly and caught the applicant. Meanwhile, her husband also caught hold of the applicant, but anyhow, he managed to flee by giving a jolt to him. On hearing the screaming, Saroj, neighbour of the complainant came there and saw the applicant. Immediately after the incident, the complainant reported the matter in the Police Station Mahasamund. On completion of the investigation, the Police filed a charge sheet against the applicant before the Court of Chief Judicial Magistrate, Mahasamund. After framing of charge and recording of evidence, the offences were found proved and the applicant was convicted and sentenced as stated herein above. An appeal was preferred by the applicant against that judgment, which was dismissed and the judgment of the trial Court was affirmed. Hence, this revision petition.

3) Learned counsel for the applicant submits that the applicant is not challenging his conviction. He further submits that he confines his argument to the sentence part only and prays to reduce the jail sentence awarded to the applicant to the period already undergone by him as he has been facing the case against him since 2001. He was in jail for nearly two months and has been

granted bail by this Court on 29.07.2004. Learned counsel for the applicant has further submitted that the applicant has no criminal antecedent. Since the applicant has already served nearly two months' jail sentence, the same be reduced to the period already undergone by him.

4) On the other hand, learned State counsel supported the impugned judgment though not disputed the above facts.

5) It is not in dispute that the applicant was 25 years old at the time of incident and now he is 41 years old; there is no criminal antecedent against him and the present offence is his first one, for which he faced trial, appeal and the present revision for the past 16 years. He remained in custody for nearly two months and the total sentence awarded to him was six months.

6) Considering all the facts and circumstances of the case, also considering the prayer of learned counsel for the applicant and in view of present age of the applicant, as also considering his custody period as well as the period passed in trial, appeal and revision, I am of the considered opinion that ends of justice would be met if, while affirming the conviction, the jail sentence awarded to the applicant is reduced to the period already undergone by him. It would not be in the interest of justice to send him back to Jail after a long gap of 16 years.

7) Accordingly, on the basis of the aforesaid discussion, the revision filed by the applicant is hereby partly allowed. The conviction of the applicant under Sections 457 and 354 of the IPC is

hereby maintained and his jail sentence awarded thereunder is reduced to the period already undergone by him.

8) It is reported that the applicant is on bail. His bail bonds are not discharged at this stage and shall remain operative for a further period of six months from today in view of the provisions contained under Section 437-A of the Cr.P.C.

9) Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Anil Kumar Shukla)
JUDGE