

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1361 of 2016

Tahir Khan S/o Late Ismile Khan Aged About 55 Years R/o H.I.G - 55, Hudco,
Police Station Bhilai Nagar, Civil And Revenue District Durg Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through : District Magistrate, Durg, District Durg,
Chhattisgarh

---- Respondent

Shri Sunil Otwani, counsel for the petitioner/s.
Shri D.R.Minj, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

30/01/2017

Heard.

A short ground for consideration before this Court is whether the learned Additional Sessions Judge, Durg was justified in dismissing the revision as not maintainable on the ground that this is second revision.

2. Learned counsel for the petitioner submits that the order was passed on 03/08/2015 by the Magistrate rejecting petitioner's application under Section 239 CrPC for discharge. The order was taken in revision in Revision case No.0000181/2015 and by order dated 08/12/2015, revision was allowed by setting aside order dated 03/08/2015 and remanding the matter for consideration afresh by the Magistrate. Thereafter, the Magistrate again passed an order on 26/05/2016 which was again assailed in revision. By impugned order, learned Additional Sessions Judge has dismissed the revision as not maintainable. Learned counsel submits that the revision which was subsequently filed was not against earlier order dated 03/08/2015 but against subsequent order dated 26/05/2016 and merely because second order was passed upon remand, it could

not be said that the Court was called upon to again exercise revisional jurisdiction in respect of the same order which was earlier set aside in exercise of revisional jurisdiction.

3. On the other hand, learned State counsel submits that as order dated 03/08/2015 and order dated 26/05/2016 related to the same matter, the petitioner sought to invoke revisional jurisdiction touching upon the same issue.

4. The revision preferred by the petitioner against order dated 26/05/2016 cannot be said to be invoking revisional jurisdiction against the same order on more than one occasion or invoke revisional jurisdiction against an order passed in revision.

5. The Bar of Section 397 (3) of CrPC applies in case of further revision petition by the same person. The scope and ambit of this provision was explained by the Supreme Court in the case of **Jagir Singh v. Ranbir Singh, (1979) 1 SCC 460** that if an application for revision has been made by any person either to the High Court or to the Sessions Judge, then according to Section 397 (3), no further application by same person shall be entertained by either of them. The decision of the Sessions Judge, if he is approached first, is made final and conclusive. A person aggrieved by the decision of the Sessions Judge in revision would have no right to approach the High Court again in revision.

6. Earlier order passed on 03/08/2015 was set aside by the Revisional Court and remanded back. Rightly or wrongly, the Court below again considered the matter and passed an order on 26/05/2016. Against this order, there is no bar under Section 397 (3) of CrPC. The Court below wrongly construed the order that it would be a case of petitioner seeking to invoke revisional jurisdiction against the same cause of action. The two orders are different. Therefore, the impugned order cannot be sustained and is set aside. The Revisional Court shall examine Criminal Case No.0000148/2016 in accordance with law and on its own merits.

7. This petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge