

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.412 of 2005

Order Reserved on : 1.8.2017

Order Passed on : 28.8.2017

Sudhakar Hatwar, S/o Shri Ganpat Rao Hatwar, aged about 57 years,
Executive Engineer, P.W.D., Ambikapur Division, R/o H.I.G. 19,
Sector-1, Shankar Nagar, Raipur, Chhattisgarh

---- **Petitioner**

versus

1. State of Chhattisgarh through the District Magistrate, Dantewada, Chhattisgarh
2. Bablu @ Jitendra, S/o Shri Surya Pal Singh, aged about 39 years, occupation Contractor, R/o Nakulnar, P.S. Kuakunda
3. Shivdayal Singh Tomar, S/o Shri Preetam Singh, aged 42 years, occupation Contractor, Kailash Nagar, Dantewada
4. Santosh Mahapatra, S/o Shri Agadu Mahapatra, aged about 38 years, occupation Contractor, R/o Gayatri Mandir Para, Dantewada, P.S. and District Dantewada

--- **Respondents**

For Petitioner : Shri Pragalbha Sharma, Advocate on behalf of
Shri Maneesh Sharma, Advocate

For State/Respondent No.1 : Shri Sameer Behar, Panel Lawyer

For Respondents No.2 to 4 : Shri Utsav Mahiswar, Advocate on behalf of
Shri P.R. Patankar, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure is directed against the judgment of acquittal dated 21.6.2005 passed in Criminal Case No.485 of 2002 by the Chief Judicial Magistrate, Dantewada by which the Learned Chief Judicial Magistrate has acquitted the accused/Respondents No.2 to 4 of the charges framed against them under Sections 341,

506B, 342, 365, 383 read with Section 34 of the Indian Penal Code.

2. In brief, the prosecution case was that at the time of incident, the Petitioner/Complainant was posted as an Executive Engineer in Public Works Department at Dantewada. On 21.12.2000, while working in his office, he came to know that he had been transferred to Raipur from Dantewada. Having heard this information, he decided to go to Raipur to find out its truth. Late night, at about 1:00 a.m., he along with his driver and one contractor Surendra Yadav left for Raipur in his official jeep. On the way, near Village Geedam, their jeep was intercepted by another jeep. Accused/Respondents No.2 to 4 came out of the jeep and asked the Petitioner/Complainant to get down from his jeep and to accompany them back to Dantewada as they had come to know that the Petitioner had been transferred to Raipur from Dantewada. As such, they demanded that the Petitioner had to just hand over the charge thereafter only he could leave Dantewada. They also threatened the Petitioner. The Petitioner was forced to accompany the accused/Respondents No.2 to 4 to go back to Dantewada. At Dantewada, he was forced to sign the documents handing over the charge. Thereafter, they forced the Petitioner to accompany them to go to the nearby forest area. There the Petitioner was forced to write a note that the money which was being carried by him was obtained by corrupt means. When the Petitioner opposed, he was abused and threatened. As such, the Petitioner wrote the note demanded by the accused. Thereafter, the accused/Respondents No.2 to 4 took the Petitioner to Bhanpuri via Jagdalpur where they took away 1 suitcase, 1 briefcase and 3 bundles of documents from the possession of the Petitioner and instructed him to go to

Raipur and not to return. After reaching at Raipur, the Petitioner informed about the said incident to his office on telephone and also lodged a First Information Report with Civil Lines Police Station at Raipur, which was transferred to Police Station Geedam. After investigation, a charge-sheet was filed against the accused/Respondents No.2 to 4 under Sections 365, 341, 506B, 384 read with Section 34 and Section 120B of the Indian Penal Code.

3. The Trial Court framed charges under Sections 341, 506B, 342, 365, 383 read with Section 34 of the Indian Penal Code against the accused/Respondents No.2 to 4. During trial, total 13 witnesses were examined by the prosecution, but the Petitioner, who was the Complainant of the case was not examined. After trial, the accused have been acquitted of the charges framed against them as mentioned above in the first paragraph.
4. The State/Respondent No.1 did not file any appeal against the judgment of acquittal of the accused/Respondents No.2 to 4, but the Petitioner/Complainant has preferred the instant revision against the said judgment.
5. Learned Counsel appearing for the Petitioner/Complainant argued that the Complainant was the material witness of the said case. Summons were never served upon him nor any sincere efforts were made for service thereof. The impugned judgment of acquittal is contrary to the facts and circumstances of the case and the law. The Court below has failed to appreciate that closing of the prosecution evidence was not within its power unless the prosecution itself had ceased to do so. It was further submitted that the Court below has not taken necessary steps for service of

summons provided in the Code of Criminal Procedure. The Court below failed to comply with the provisions of the Cr.P.C. and the jurisdiction referred to therein for service of summons upon a government servant. The impugned judgment of acquittal suffers from material illegality.

6. Learned Counsel appearing for the State/Respondent No.1 has supported the impugned judgment of acquittal.
7. Learned Counsel appearing for the accused/Respondents No.2 to 4 has also supported the impugned judgment of acquittal. He submitted that the judgment of acquittal is based on the evidence available on record and the Trial Court has not committed any error in appreciation of the evidence.
8. I have heard Learned Counsel appearing for the parties, perused the entire record of the Trial Court minutely.
9. No doubt, the Petitioner/Complainant was the main witness of the case. Perusal of the entire record of the Trial Court reveals that the charges were framed on 9.5.2003. On 4.11.2003, PW-1, T. Simanchalam and PW-2, Surendra Yadav were examined, thereafter on 24.2.2004, PW-3, Mohan Singh and PW-4, Durga Prakash Singh, on 18.3.2004, PW-5, P.S. George, on 27.4.2004, PW-6, Kailash Sahu and PW-7, Anwar Khan, on 17.6.2004, PW-8, Sukku Karma, PW-9, Dhan Singh and PW-10, Kalicharan Sharma, on 20.8.2004, PW-11, Vinay Pratap Singh, on 16.9.2004, PW-12, Surendra Singh Manjhi and on 19.5.2005, PW-13, Constable Budhram Khare have been examined by the prosecution. On 19.5.2005, the Trial Court ordered to issue bailable warrant against the remaining prosecution witnesses including the

Petitioner/Complainant. Thereafter, on 8.6.2005, no witness was present and the Trial Court closed the prosecution evidence on that date. The order-sheet of the Trial Court dated 8.6.2005 states that the Trial Court issued summons and bailable warrants to the Petitioner/Complainant many times, but he did not appear. Therefore, the Trial Court deemed it fit not to afford any further opportunity to the prosecution to lead evidence and accordingly closed the prosecution evidence.

10. From perusal of the order sheets of the Trial Court, it reveals that on 23.9.2003, 4.11.2003, 18.3.2004, 27.4.2004, 17.6.2004, 17.7.2004, 20.8.2004, 16.9.2004, 20.10.2004, 1.12.2005, 14.2.2005, 20.4.2005 and 5.5.2005, the Trial Court ordered to issue summons to the prosecution witnesses including Petitioner/Complainant Sudhakar Hatwar, but there is no endorsement in any of the said order-sheets to show service of summons upon Complainant Sudhakar Hatwar. No served or unserved summons is available on the record also relating to Complainant Sudhakar Hatwar. Undoubtedly, after the said incident, Complainant Sudhakar Hatwar was transferred to Raipur. From perusal of the record, it also reveals that no sincere efforts were made to serve summons upon the Complainant at Raipur.
11. On 19.5.2005, a bailable warrant was issued to the Petitioner/Complainant. The same was also not returned served or unserved. In spite of that, on 8.6.2005, the Trial Court closed the prosecution evidence. Thereafter, on 21.6.2005, judgment of acquittal was pronounced.
12. In **K. Chinnaswamy Reddy v. State of Andhra Pradesh, AIR 1962 SC 1788**, the Supreme Court observed in paragraph 7 as

under:

“7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.”

13. In **Vimal Singh v. Khuman Singh, (1998) 7 SCC 223**, it has been observed in paragraph 9 thus:

“9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision

suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.”

14. In the instant case also, it is clear from perusal of the entire record of the Trial Court that the Petitioner/Complainant is the main witness of the case. Summons were never served upon him. It is also clear from the record that no sincere efforts were made for service of summons upon him. In spite of that, closing of evidence of the prosecution without there being sincere efforts for service of summons upon the Complainant is a manifest error of procedure and has caused miscarriage of justice.
15. In view of the foregoing discussion and in the light of the aforesaid

judgments of the Supreme Court, the impugned judgment passed by the Trial Court deserves to be set aside.

16. Consequently, the matter is remanded back to the Trial Court for fresh decision in accordance with law with a direction that the Petitioner/Complainant be examined and proper course of law, if necessary, be adopted before final disposal of the case. The parties shall appear before the Trial Court on **2.11.2017 positively**.
17. The criminal revision is allowed in the aforesaid terms.
18. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE