

COURT OF CHHATTISGARH, BILASPUR

S.B. : Hon'ble Shri Justice Chandra Bhushan Bajpai

Criminal Revision No. 308 of 2017

Applicants

1. Kanhaiya @ Pandu S/o Nilaram Gond, aged 30 years,
 2. Rahul @ Laxman s/o Krishna Gond aged 19 years,
- Both are R/o B.K. Bahara P.S. Bhimkhoj, District Mahasamund (CG)

Versus

Respondent

State Of Chhattisgarh Through District Magistrate Janjgir, District Janjgir Champa (CG)

Criminal Appeal under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973

Appearance:

Shri Ishwar Jaiswal, Advocate for the applicants.
Shri Vivek Singhal, Panel Lawyer for the State.

ORDER

(24-3-2017)

1. The applicants had filed this Cr. Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short 'the Code') as they were convicted by the judgment dated 18.2.2016 passed in Cr. Case No.143/2015 by the Judicial Magistrate First Class Dabhra, District Janjgir Champa (CG) for the offence under Section 379 read Section 34 IPC and sentenced for R.I. for 2 years and to pay fine of Rs.1,000/- in default of payment of fine further undergo R.I. for 10 days.

Both the applicants had challenged the judgment of conviction before the 1st Additional Sessions Judge, Sakti, District Janjgir Champa who vide judgment dated 16th March, 2017 passed in Cr. Appeal No.18/2016 affirmed the judgment of conviction and the sentence passed by the trial Court.

2. The applicants had preferred the instant Cr. Revision before this Court against the judgment of the courts below stating that both the courts below have erred in not appreciating the evidence in its right perspective and thereby committed illegality, hence, the revision may be allowed and the conviction and sentence awarded by the courts below be set aside.

3. Heard learned counsel for both the parties and perused the judgment of the trial court as well as the appellate court.

4. Learned counsel for the applicants would submit that as directed he is not assailing the conviction part of the judgment passed and affirmed by both the court below. He is praying the quantum of sentence as both the applicants sentenced for R.I. for 2 years along with fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for 10 days. Both the applicants have deposited the fine amount and as per para 30 of the judgment of the appellate court both the applicants have served the sentence by languishing in jail since 13.2.2015 till 26.7.2016 i.e. for 1 years 5 months and 13 days and thereafter after the judgment passed by the appellate court since 16th March, 2017 till date. Both the

applicants are first offender. Applicant No.2 is aged about 19 years at the time of incident. Prior to this incident they have not involved in any other offence and they will not commit any offence in future and as per allegations they have committed theft of Rs.55,640/-, 1 sim, 1 bag and one bank slip. During investigation, the entire theft amount and other articles were seized, therefore, looking to the entire facts and circumstances they may be given an opportunity to remain in the society without committing any further offence, hence, their sentence may be limited for the period already undergone

5. Learned counsel for the State opposed the arguments advanced and would submit that both the applicants are resident of district Mahasamund (CG) and they have committed theft in the jurisdiction of Police Station Chandrapur away from their residence goes to show their involvement in such activities, hence, the instant Cr. Revision may be dismissed on all counts.

6. In order to appreciate the arguments advanced on behalf of the parties, perused both the judgments passed by the courts below.

7. As per para 2 of the judgment passed by the trial Court, the cash of Rs.55,640/-, 1 bag, bank slip and 1 sim was stolen from the dicky of motorcycle of the complainant and thereafter during investigation, the said stolen articles were recovered including cash amount. There is no fact in the judgment that the applicants are not the first offender. With the above, it has to be presumed that the applicants are first offenders. In

the case where entire stolen property is recovered, the applicants served about 75% of the sentence awarded to both the applicants and they have deposited the fine amount and they are praying that if an opportunity is given they will not commit any offence in future, in the considered view of this court, the period of 1 year 5 months and 13 days would be sufficient for the offence committed by both the applicants.

8. Consequently, the Cr. Revision filed is partly allowed. The conviction of both the applicants under Section 379 read with Section 34 IPC is hereby affirmed. The fine sentence awarded by the trial court is also affirmed. However, the sentence awarded to both the applicants are modified and instead R.I. for 2 years to each of the applicants, both the applicants are sentenced for the period already under by them.

9. It is stated that the applicants are in jail. They be released forthwith if not required in any other case.

10. The Cr. Revision is partly allowed.

Sd/

(Chandra Bhushan Bajpai)

JUDGE

