

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 847 of 2015

1. Smt. Gayatri Bai W/o Gendram Kashyap Aged About 45 Years
R/o Village Negurdih, P.S. Nawagarh, District Janjgir Champa
Chhattisgarh

2. Motilal S/o Hetram Khunte Aged About 30 Years R/o Village
Katiya, P.S. Nawagarh, District Janjgir Champa Chhattisgarh

3. Kalleram S/o Puniram Yadav Aged About 40 Years R/o Village
Pipra, P.S. Nawagarh, District Janjgir Champa Chhattisgarh

4. Tulsi S/o Fekanlal Kashyap Aged About 33 Years R/o Village
Negurdih, P.S. Nawagarh, District Jajgir-Champa Chhattisgarh

---- Applicants

Versus

State Of Chhattisgarh Through The Police Station Nawagarh,
District Janjgir Champa Chhattisgarh

---- Respondent

And

CRR No. 828 Of 2015

1. Smt. Gayatri Bai W/o Gendram Kashyap Aged About 45 Years
R/o Village Negurdih, P.S. Nawagarh, District Janjgir-Champa
(Chhattisgarh).

2. Motilal S/o Hetram Khunte Aged About 30 Years R/o Village
Katiya, P.S. Nawagarh, District Janjgir-Champa (Chhattisgarh).

3. Kalleram S/o Puniram Yadav Aged About 40 Years R/o Village
Pipra, P.S. Nawagarh, District Janjgir-Champa (Chhattisgarh).

4. Tulsi S/o Fekanlal Kashyap Aged About 33 Years R/o Village
Negurdih, P.S. Nawagarh, District Janjgir-Champa (Chhattisgarh).

---- Applicants

Vs

Top Kumar Banjare S/o Bhanu Pratap Aged About 37 Years R/o
Village Negurdih, P.S. Nawagarh, District Janjgir-Champa
(Chhattisgarh).

---- Respondent

For applicants- Shri Somnath Verma, Advocate.

For State- Shri Suryakant Mishra, PL.

None for the respondent in CRR No. 828 Of 2015 though served.

Hon'ble Shri Justice Goutam Bhaduri**Order****6/04/2017**

1. Both these revisions are heard and decided together as they are arising out of the same order.
2. Both the revisions are against the order dated 25/06/2015. Two appeals were preferred before the court below one by the State which was bearing number Criminal Appeal No.77/2013 and one by the complainant of the original case namely Top Kumar Banjare bearing Criminal Appeal No.76/2013.
3. Brief facts of the case are that in between period 1/05/2010 to 10/05/2010 at village Negurdih, development work was carried out and the work was carried under the Mahatma Gandhi Rojgar Yojna for leveling of certain land. It was alleged that said work was done without deployment of any labour and the same was done by the JCB Machine and truck, however it was shown on papers that amount of remuneration of Rs.5,88,000/- was paid to the labour and total cost expenditure incurred was shown to Rs.7,70,000/-. It was stated that by preparation of forged muster roll the accused/applicants prepared fabricated documents. Thereby, offence is committed. It was also alleged that complaint having been made to the SDO, enquiry was conducted and enquiry report was given to Chief Executive Officer, Janpad Panchayat, Janjgir. Thereafter, FIR was registered. During investigation the police seized muster roll, measurement book and other documents which bears signature of the present applicants and different documents were also obtained from the labourers and signature were obtained and charge sheet was filed under Sections 409, 420, 467, 468, 471/34 of IPC.

4. Prosecution during examination had examined 19 witnesses during trial. Learned JMFC acquitted the accused after trial as prosecution failed to prove the charge by evidence. Being aggrieved therefrom two appeals were filed one by the complainant and one by the State which were bearing number Criminal Appeal No.76/2013 and 77/2013. Both the appeals were heard together by the Third Additional Sessions Judge, Janjgir. The appellate court remanded the case for fresh adjudication before the court of Judicial Magistrate and as such the said order is under challenge by the accused.

5. Learned counsel for the applicants would submit that the appellate court discharged the duty of like nature of prosecution and directed to produce certain documents which the appellate court was not authorised to do so. It was further submitted that the appellate court though was entitled to take additional evidence but exercise cannot be done to fill up gap and lacuna in the prosecution evidence. He referred to **AIR 1978 SC 59** in between **Bir Singh and others Vs. The State of U.P.** and would submit that in any case the appellate court could not have directed for additional evidence and re-examination of the evidence. Therefore, he submits that the order is liable to be set aside.

6. Learned State counsel opposes the prayer.

7. Perused the judgement dated 25/06/2015 as also the record. Record would show that by an order dated 22/04/2013 JMFC Nawagarh has acquitted the applicants/accused. Subsequently, the State as also the complainant had filed appeals. The appellate court after hearing both the appeals had remanded the case to trial court to decide the same on merits as certain documents were not before the trial court which were the primary documents. Against such order

instant revisions.

8. While hearing revision on admission, respective documents of the case file of the court below was called for perusal. Statement of one B.P. Survey PW-1 had stated that according to inspection leveling work was done by the JCB and not by deployment of the labour and in respect of that enquiry was also conducted. Subsequently, having satisfied that irregularity and illegality having been committed FIR was lodged. After the FIR, the police had seized muster roll, note sheet, measurement book, file cover, lay out plan, payment receipts, agreement, Patwari map and resolution of the gram panchayat. The documents so seized were marked as Ex.P-6 i.e. the seizure memo. The records further shows that on few dates witnesses were present i.e. on 28/02/2011, 28/06/2011, 2/08/2011. The order sheet purports that though the witnesses were present they were not examined. On 23/12/2011 one witness was examined and one was not examined. On 24/02/2012 again two witnesses were present they were not examined. On 28/07/2012 few of the witnesses were present, however in the intervening dates some of the witnesses were examined. However, the documents which were seized as per Ex.P-6, which were the basis of the entire case were not produced by the police. Perusal of the case file also do not show that the documents were available. In this case main allegation was that instead of deployment of the labour, JCB was used but on paper muster roll different labourers were shown and payments were shown to have been made to them. Therefore, said documents of seizure were essentially the important documents. While exercising the scope of jurisdiction of revision under Section 397 of Cr.P.C. court has all the power to examine the records of an inferior

court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding. In this case the order of acquittal of the court below and subsequent remand order to the trial court again would show that remand was made on the ground that important documents which was seized by the police was not placed before the court, therefore the very platform of the complaint was withdrawn or diluted and thereby patent defect allowed to be precipitated.

9. The Supreme Court in case of **Amit Kapoor and Ramesh Chander and another** reported in **(2012) 9 SCC 460** has referred to the scope of section 397 of Cr.P.C. Para 12 is reproduced here under:-

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely.

There are not exhaustive classes, but are mere indicative. Each case would have to be determined on its own merits.

10. Therefore, considering the facts in this case remand order made by the appellate court appears to be just and legal as also in exercise of power under section 397 of Cr.P.C. this court feels that in absence of the documents perversity has been committed and patent wrong has been allowed to surface. In the result, taking into totality of this case, I am not inclined to interfere in the order of the appellate court and patent illegality committed by trial court cannot be allowed to remain on record. Consequently, the revisions have no merit and are hereby dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE