

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 685 of 2010

Ayub Khan son of Haji Sekh Rahman Khan, aged about 43 years, resident of Rengakhar Khurd, Tehsil & District Kabirdham (Kawardha), C G

Applicant

Versus

State of Chhattisgarh through District Magistrate, Kawardha,
District Kabirdham, **--- Respondent**

For Applicant	-	Shri Basant Dewangan, Adv.
For Respondent	-	Smt. M. Asha, PL

Order on Board by Hon'ble Smt. Vimla Singh Kapoor, J.

28.11.2018:

By this revision petition the applicant has assailed the judgment dated 13.12.2010 passed by Sessions Judge, Kabirdham (Kawardha) in Criminal Appeal No. 41/2009 affirming the judgment dated 13.10.2009 passed by Judicial Magistrate Second Class, Kabirdham in Criminal Case No. 84/2009 convicting the accused/applicant under Sections 147 and 341 IPC and sentencing him to undergo RI for six months with fine of Rs. 500/- u/s 147 and SI for one month with fine of Rs. 500/- u/s 341 IPC, plus default stipulations.

2. Facts of the case in short are that on 23.02.2004 the accused/applicant herein along with co-accused persons, 20-25 in number, made the Beat Guard of village Chhapri namely Baliram Kosima (PW-6) captive for seven hours and thus wrongfully restrained him from discharging his public duties. On report being lodged by Forest Guard namely Ghanshyam Devdas (PW-1) offence

under Sections 147, 186, 341 and 342 IPC was registered, Beat Guard (PW-6) was got freed by the officers of the Revenue and Forest department, and after investigation, the *challan* was laid against the accused persons, 08 in number.

3. After examining the material available on record and the evidence of the witnesses the trial Court convicted and sentenced the accused/applicant herein as above. The findings recorded by the trial Court have subsequently been affirmed by the lower Appellate Court by the judgment impugned and it is that which is under challenge in this revision.

4. There is a certificate dated 20.04.2018 issued by the Municipal Corporation, Raipur which shows that the accused/applicant herein died on 18.03.2018 i.e. during the pendency of this revision. However, this Court has to decide the case on its own merits, in view of the order passed by the Constitution Bench of Supreme Court in the matter of **Pranab Kumar Mitra v. State of WB** reported in **AIR 1959 SC 144** which says that in absence of statutory provision in the Code of Criminal Procedure the revision will not finally abate on the death of convicted applicant and the High Court has to exercise the power to determine the case even after death of the convicted persons.

5. Counsel for the accused/applicant submits that the Court below has not given thoughtful consideration to the evidence on record while holding the accused/applicant guilty under Sections 147 and 341 IPC and therefore the judgment impugned is liable to be set aside.

6. State counsel however supports the judgment under assail and submits that the Courts below have recorded the well reasoned finding while writing the judgment impugned and therefore, no interference there-with is needed by this Court.

7. Heard counsel for the parties and perused the evidence on record.

8. Here, apart from the victim (PW-6) who was made captive by the accused/applicant and his companions - 20-25 in number and was thus wrongfully restrained from discharging his public functions, one eyewitness (PW-1) too has supported the case of the prosecution stating that on the date of incident when he was on duty along with PW-6, the accused/applicant and his colleagues held up PW-6 and asked him to make certain payment. PW-5 who freed PW-6 from the captivity has also supported the case of the prosecution. There is thus sufficient material to show that the accused/applicant along with 20-25 others held up PW-6 and thus wrongfully restrained him from discharging his official duties. Court below has been fully justified in convicting and sentencing him as shown above and no illegality or infirmity is visible in the same.

9. Revision therefore being without any substance is liable to be dismissed and it is dismissed as such.

Sd/-

(Vimla Singh Kapoor)

Judge