

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.347 of 2010**

Santosh Pandey, S/o Ramsagar Pandey, 30 years, R/o Panarapara, Jagdalpur, District Bastar (CG)

---- Appellant**Versus**

State Of Chhattisgarh Through: District Magistrate, Jagdalpur, District Bastar (CG)

---- Respondent

For Appellant : Shri Keshav Dewangan, Advocate

For State/ Respondent : Shri Ramakant Pandey, Panel Lawyer

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****28/09/2018**

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 3.4.2010, passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur(CG) in Sessions Trial No. 10/2009, whereby the appellant has been convicted for commission of offence under Sections 436 and 451 of the Indian Penal Code, 1860 (for short the IPC) and sentenced to undergo R.I. for 5 years and fine of Rs.1000/-; and R.I. for 1 year and fine of Rs.300/- with default stipulations. Both the sentences were directed to run concurrently.

2. A First Information Report was lodged for commission of offence under Sections 435 and 452 of the IPC for causing mischief by fire to one cot kept in the house of the complainant- Meghnath Patnayak. The only eye-witness of the incident is Meghnath Patnayak (PW7) and as per version of this witness, he saw the appellant causing mischief by fire to some clothes kept in the house. He deposed that one cot and some clothes were burnt. If the evidence of this witness and the F.I.R. recorded in the case is taken as it is, the case does not fall within the mischief by fire under Section 436 IPC.

3. For commission of offence under Section 436 IPC, destruction of any building by fire is a condition precedent. In the present case, there is no evidence on record that there was destruction of any building. The only evidence which is adduced before the trial Court is that one cot and some clothes were burnt by the appellant. Damage to any property by mischief by fire falls within offence under Section 435 IPC for which the F.I.R. was lodged.

4. Looking to the entire evidence, case of the prosecution is established for commission of offence under Sections 435 and 451 of the IPC. In view of the above, finding of the trial Court regarding conviction of the appellant under Section 436 IPC is not liable to be sustained. The conviction under Section 436 IPC is hereby set-aside. Instead, the appellant is convicted under Section 435 IPC and his conviction under Section 451 IPC is hereby affirmed.

5. The appellant was in custody during trial from 3.12.2008 to 1.1.2009 i.e. for 29 days and again after conviction, he was in jail from 3.4.2010 to 7.7.2010, which is 3 months and 4 days. In all, he has suffered the jail sentence for 4 months. He is convicted for the offence under Sections 435 and 451 IPC and sentenced to the period already undergone by him while the fine amount imposed by the trial Court shall remain intact.

6. With these modifications, the appeal is partly allowed.

Sd/

(Ram Prasanna Sharma)
JUDGE