

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 404 of 2009**

1. Umashankar And Ors. R/o Vill. Khaira Dagania, P.S. Seepat, Distt. Bilaspur C.G.
2. Gauri Shankar S/o Ramphal Sahu R/o Vill. Khaira Dagania, P.S. Seepat, Distt. Bilaspur C.G.
3. Shyam Sunder S/o Gauri Shankar Sahu R/o Village Khaira Dagania, P.S. Seepat, Distt. Bilaspur (C.G.)

---- Appellants**Versus**

- State Of Chhattisgarh Through the District Magistrate, Bilaspur

---- Respondent

For the Appellants	: Shri Abhijeet Mishra, Advocate.
For complainant	: Shri Shashi Bhushan Tiwari, Advocate.
For the State/Respondent	: Shri Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****09/08/2018**

1. This appeal has been preferred against the judgment dated 19.06.2009 passed by the Additional Sessions Judge, Bilaspur, District Korba, Chhattisgarh in S.T. No. 86/2009 by which the appellants have been convicted under Sections 325/34 of Indian Penal Code (for short 'IPC') and sentenced to undergo RI for 6 months with fine of Rs.250/-

plus default stipulation. They have also been convicted under Section 3/5 of the Chhattisgarh Tonhi Pratadna Nivaran Act, 2005 (for short 'the Act') and sentenced to undergo RI for 6 months with fine of Rs.250/- along with default stipulation.

2. During the pendency of this appeal, the appellant has entered into a compromise with complainant Geeta Bai and therefore it has been prayed that the said compromise may also be taken into consideration.
3. The facts of the case, in brief, are that on the date of incident these appellants making allegation against complainant Geeta Bai that she is a Sorcerer, abused, threatened and assaulted her and caused grievous injuries including fracture on her left wrist bone. After lodging of FIR Ex.P/1, case was investigated and charge-sheet was filed by the concerned Police Station.
4. Charges under Section 294, 506, 325, 306/34 of IPC and Section 3 of the Tonhi Pratadna Act were framed against the appellants, who denied and prayed for trial. After cross examination of prosecution witnesses, the appellants were examined under Section 313 of Cr.P.C. in which they denied all incriminating evidence against them pleaded innocence and false implication. No witness was examined in defence.
5. On completion of trial, the impugned judgment has been passed in which the appellants stand convicted and sentenced as aforesaid.

6. Appellants and complainant Geeta Bai have jointly filed application praying compounding of offence under which the appellants stood convicted. Statement of complainant Geeta Bai PW1 has been recorded by the Registry of this Court in which she has stated that she has entered into compromise with the appellants without any fear or influence and now she does not want to prosecute the appellants.
7. Considering this statement, it appears that the complainant has given consent freely for the compromise and on this basis, the composition of offence under Section 325 of IPC, regarding which application is filed, is allowed.
8. As the offence under Section 3 read with Section 5 of the Act, 2005 is not compoundable, therefore, both the parties are heard.
9. Heard both the parties and perused the record.
10. Geeta Bai PW1 is the main witness. She has stated in her statement before the Court that on the date and time of incident she was alleged by the appellants that she is a sorcerer and the appellants quarreled with her and thereafter the incident of assault also took place. In the cross examination she remained firm on her statement given.
11. Sita Ram Sahu PW2 has supported the statement of Geeta Bai PW1. Lalaram PW3 has stated that he was informed by Geeta Bai PW1 about the incident. FIR Ex.P/1 was lodged by Geeta Bai PW1. Head Constable Chhotelal Ahirewar PW11 has proved in his statement

about the lodging of FIR by Geeta Bai based on which offence under Section 3 read with Section 5 of the Act has been registered against the appellants.

12. After considering and scrutinizing the entire evidence available on record against the appellants with respect to the offence under the Tohni Prasdna Adhiniyam, 2005, this Court is of the view that as the statement of prosecution witnesses stood unrebutted and unchallenged, therefore, the findings of the trial Court convicting the appellants under Section 3 read with Section 5 of the Act needs no interference.
13. Counsel for appellant submits that in such a case looking to the compromise between the parties the sentence imposed upon the appellants be reduced. Reliance has been placed on the judgment of the Supreme Court in ***Gulab Das and others Vs. State of Madhya Pradesh*** reported in ***M.P. (2011) 10 SCC 765***, ***Rajendra Harakchand Bhandari and others Vs. State of Maharashtra and another*** reported in ***(2011)13 SCC 311*** & ***Ram Lal and another Vs. State of J & K*** reported in ***(1999)2 SCC 330*** in which Hon'ble Supreme Court has reduced the sentence to the period of detention already undergone on ground of compromise between the parties.
14. After due consideration of the submission and the development that has taken place because of compromise between the parties, this appeal is allowed in part. On the basis of compromise and

composition of offence, the appellants are acquitted of charge under Section 325/34 of IPC and the conviction and sentence imposed upon them is set aside. Conviction of appellants under Section 3 read with Section 5 Tohni Pradna Adhiniyam, 2005 is maintained, however, the sentence of imprisonment imposed upon them is set aside sentenced with imprisonment of till rising of the Court and fine Rs.500/-, which has already been paid by the appellants.

15. The appellant shall appear before the trial Court on 17th September, 2018 to undergo the sentence of imprisonment as ordered in this judgment.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha