

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 524 of 2009

Omprakash S/o Babaiya Ram, aged about 21 years, R/o Village Sendri,
Police Station : Jaijaipur, District Janjgir- Champa, CG.

---- Applicant

Versus

- State of Chhattisgarh through – RPF Champa, District Janjgir-
Champa, CG.

---- Respondent

For Applicant : Shri Deepak Jain, Advocate

For Respondent/State : Smt. M. Aasha, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

27 /11/2018

1. The applicant in this revision has challenged the judgment dated 30.10.2009 passed by Additional Sessions Judge (FTC) Bilaspur, CG in Criminal Appeal No. 73/2009 arising out of the judgment dated 24.07.2009 passed by Special Railway Magistrate, Bilaspur District Bilaspur in Criminal Case No. 86/2006 convicting the accused/applicant under Section 160 (B) of Indian Railway Act, and sentencing him to undergo RI for six months plus default stipulation.
2. Case of the prosecution, in brief is that on 09.01.2008 the accused/applicant while driving his Mahindra Jeep bearing registration No. CG-13/4909 in a rash and negligent manner had struck against the railway crossing gate as a result of which it was badly damaged leading to traffic jam for hours together. On complaint being made to the RPF by gate keeper Parasram Lahare (PW-1), a case was registered against the accused/applicant under

Section 160(B) of the Indian Railway Act and he was taken into custody.

3. On being satisfied with the averments of the parties and evidence on record the trial Court convicted and sentenced the accused/applicant as mentioned above. The findings recorded by the trial Court have been affirmed by the lower appellate Court by the Judgment impugned, and it is that which is under challenge in this revision.
4. Learned counsel for the accused/applicant submits that he is not pressing this revision on merits and would confine his argument to the sentence part of the judgment impugned therein. According to him, as the incident had taken place in the year 2006, and that he has already remained in jail for a period of 07 days, no useful purpose would be served in again sending him to jail, and therefore, the jail sentence imposed upon him may be reduced to the period already undergone.
5. State counsel however, supports the findings recorded by both the Courts below.
6. Heard counsel for the parties and perused the material on record.
7. Though counsel for the accused/applicant is not inclined to press the conviction of the accused/applicant on merits, this Court thinks it appropriate to refer to the evidence of the witnesses to ascertain his guilt or innocence and therefore, it proceeds to do so.
8. From the evidence It is apparent that the railway property being the gate of railway crossing was damaged by the accused/applicant on account of rash negligent driving of the jeep particularized above. Even though the accused/applicant have taken a plea that the incident took place on account of failure of break of the jeep in

question, the mechanical examination of the vehicle shows that no such fault in break was noticed, and all this was the result of rash negligent driving of the accused/applicant alone. Thus, in the light of the evidence on record there appears to be no illegality or infirmity in the judgment impugned warranting interference by this Court. Conviction of the accused/applicant is thus maintained.

9. As regards sentence, keeping in view the fact that the incident had taken place about 12 years back and the applicant has already remained in jail for a period of 07 days, this Court is of the opinion that it would be in the interest of justice to reduce the sentence to the period already undergone by him. Order accordingly.
10. Resultantly, the revision petition is hereby allowed in part with the modification in the judgment impugned as above.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan