

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 242 of 2013

- Ramavtar Dhruv, Aged About 42 Years, S/o Late Shri Adhari Ram Dhruv, Government Servant, Inspector At Present Station House Officer, PS Pandatarai, At Present Posted At Kawardha, Distt. Kabirdham, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Distt. Magistrate, Kabirdham, Chhattisgarh

---- Respondent

For Applicant	:	Shri D.S. Rajput and Shri Raghvendra Pradhan, Adv.
For Respondent/State	:	Shri Priyank Rathi, PL

Hon'ble Smt. Justice Rajani Dubey

Order On Board

04.07.2019

The present revision arises out of the impugned order dated 21.01.2013 passed by the learned Additional Sessions Judge, Kawardha, in Cr. Appeal No. 38/2012, whereby the learned appellate Court has dismissed the appeal of applicant arises out of order dated 20.03.2012, passed by the learned Judicial Magistrate First Class, Padariya, District – Kawardha, in Miscellaneous Criminal Case No. 57/2011 at the motion stage itself.

2. The applicant filed this revision on the ground that the learned Judicial Magistrate First Class had issued summons, for appearance of the witnesses on 01.08.2011, but the Station House Officer/applicant neither served the summons nor returned it back with any

endorsement. Therefore, the learned Judicial Magistrate First Class issued show cause notice under Section 173 of the IPC, and the applicant replied to the same and, thereafter, the learned Judicial Magistrate First Class taking cognizance against the applicant under Section 173 of the IPC passed order dated 20.03.2012 in Miscellaneous Criminal Case No. 57/2011 imposing fine of Rs.1000/-.

3. Being aggrieved by the order dated 20.03.2012, the applicant preferred criminal appeal which was dismissed by the Lower Appellate Court by the impugned order dated 21.01.2013, hence this revision.

4. Learned counsel for the applicant submit that the order passed by the learned Additional Session Judge, Kawardha, is perverse and contrary to provisions of law and is liable to be set aside. Learned Appellate Court below ought to have considered the fact that Section 173 of IPC is not attracted in the present case, and, therefore, the order of imposition of fine amount is arbitrary, illegal and contrary to the law. The proceedings initiated against the applicant and the imposition of the fine amount is contrary to the provisions under Sections 190, 192, 195 and 197 of the Cr.P.C. Lastly it has been argued that the applicant has replied to the show cause notice in a very positive manner tendering apology, which clarified his innocence, but both the Courts below did not consider his reply, and the impugned order was passed, which is liable to be set aside.

5. Learned counsel for the State supported the impugned order so far as it relates to the imposition of fine amount on the applicant, but he agreed on this aspect that the learned trial Court had not followed the correct procedure of Criminal Procedure Code.

6. Heard counsel for the parties and perused the material available on record including the impugned judgment and order.

7. Section 173 of the Indian Penal Code reads as under :-

“173. Preventing service of summons or other proceeding, or preventing publication thereof.—Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order,

or intentionally prevents the lawful affixing to any place of any such summons, notice or order,

or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed,

or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent, or [to produce a document or electronic record in a Court of Justice], with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

8. It is clear from the record that the learned trial Court has registered the case under Section 173 of the IPC against the applicant and accordingly charge was framed against the present applicant. The applicant pleaded his guilt and trial Court passed judgment dated 20.03.2012 convicting him under Section 173 of the IPC and to pay fine of Rs.1000/-.

9. The Hon'ble Supreme Court in the matter of **M.S. Ahlawat Vs. State of Haryana**, reportedly in **AIR 2000 SC 168**, held that what is the correct procedure ought to be followed under Section 195 and 340 of the Cr. P.C. Similarly, as in the principles held in **Gopal Krishna Menon and anr. Vs. D. Raja Reddy and another in 1983 (2) CRIMES 584.**

10. Section 340 of the Cr. P. C. reads as under :-

- "340. Procedure in cases mentioned in Section 195 :-** (1) *When, upon an application made to it in this behalf of otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-*
- (a) record a finding to that effect;*
 - (b) make a complaint thereof in writing;*
 - (c) send it to a Magistrate of the first class having jurisdiction;*
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*
 - (e) bind over any person to appear and give evidence before such Magistrate.*
- (2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.*
- (3) A complaint made under this section shall be signed,-*
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*
 - (b) in any other case, by the presiding officer of the Court (or by such officer of the Court as the Court may authorise in writing in this behalf).*
- (4) In this section, " Court" has the same meaning as in section 195."*

11. The trial Court wrongly framed charges under Section 173 of the IPC and did not follow correct procedure as prescribed under Section 340 of the Cr. P.C., rendering the whole procedure of the trial Court illegal and contrary to the provisions of law. Learned Sessions Judge also overlooked this legal procedure and dismissed the appeal at motion stage itself. Thus, the orders passed by both the Courts below dated 20.03.2012 and 21.01.2013, are liable to be set aside.

12. Accordingly, the revision is allowed. The impugned judgment of conviction and order of sentence is set aside and applicant is acquitted of the charges leveled against him. However, the fine, if deposited, be refunded to the applicant.

Sd/-
(Rajani Dubey)
Judge