

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 120 of 2008**

- Mumtaz Tazia Begum, Employee in Health Centre, Aged about 35 years, R/o Village Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).

---- Applicant

Versus

1. State of Chhattisgarh, Through- P.S. Akaltara, District- Janjgir-Champa (C.G.).
2. Babla @ Anurag, S/o Tapodhan Singh, Aged about 26 years, R/o Village- Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).
3. Sanjaya Singh, S/o Rajeshwar Singh, Aged about 36 years, R/o Village- Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).
4. Dhananjay Singh, S/o Maheshwar Singh, Aged about 46 years, R/o Village- Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).
5. Banti @ Abinash, S/o Tapodhan Singh, Aged about 23 years, R/o Village- Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).
6. Udayraj, S/o Rajkumar, Aged about 35 years, R/o Village- Sankar, P.S.- Akaltara, Distt.- Janjgir-Champa (C.G.).

---- Respondents

For Applicant	: Mr. Neeraj Kumar Mehta, Advocate
For Respondent/State	: Mr. Wasim Miyan, Advocate
For Objector	: Ms. Pragya Pandey on behalf of Mr. Prateek Sharma, Advocate

Hon'ble Smt. Justice Rajani Dubey**Order on Board****23.08.2019**

1. This revision has been filed by the applicant against order dated 22.12.2007 passed by Sessions Judge, Janjgir-Champa (C.G.), in Criminal Appeal No. 36/2007 whereby, the learned Sessions Judge allowed the appeal of respondents and set aside the judgment and order of conviction and sentence dated 05.10.2007 in Criminal Case No. 222/2007 passed by Judicial Magistrate First Class,

Janjgir-Champa and acquitted them of the charges under Sections 147, 448 & 332 of IPC.

2. Brief facts of the case are that on 21.08.2005, at about 8:15 PM, all the respondents (accused persons) with making an unlawful assembly with a common intention, forcibly trespassed and entered the Panchayat Bhavan where the applicant and other employees were performing their duties and further they (respondents) abused, called bad and vulgar names and made obstacles in performance of their duties. On this report, offence under Sections 147, 149, 448 and 332 of IPC has been registered against the respondents and after completion of investigation charge-sheet has been filed and charges were framed against all respondents.
3. The learned Judicial Magistrate First Class by judgment dated 05.10.2007 convicted all respondents for an offence U/s 147 of IPC and sentenced them to undergo R.I. for 6 months and fine of Rs. 300/- (for each accused persons), for an offence U/s 448 of IPC sentenced them to undergo R.I. for 6 months and fine of Rs. 400/- (for each accused persons) and for an offence U/s 332 of IPC sentenced them to undergo R.I. for 6 months and fine of Rs. 300/- (for each accused persons) with default stipulation. This order was appealed by the respondents and learned appellate Court allowed the appeal of respondents and acquitted them of all the charges. Hence, this revision.
4. Learned counsel for the applicant submits that the impugned order is not only bad and perverse in law but also manifestly wrong leading to a grave miscarriage of justice. The learned appellate Court has arbitrarily appreciated and scrutinized the evidence on

record and blindly set a side and quashed the judgment of the learned trial Court. The learned appellate Court has committed an error of law by discarding the fully corroborated testimony of P.W.1 (complainant/ Mumtaz Rajiya) and P.W.2 (Bharatlal Sharma) expressing its own views that they are interested witnesses because they are employees in same department. The learned appellate Court has acted upon the statement of hostile witnesses. The learned appellate Court has mistaken in holding that FIR was belated and cooked-up and thorough and plausible explanation for the delay was given by the complainant. The learned appellate Court has stressed on minor contradictions and disbelieved them which is totally illegal and unwarranted by law itself. There is no reason to disbelieve the testimony of P.W.2 (Bharat Lal) who himself is an injured witness and also the evidence of Dr. C.P. Singh. Hon'ble Apex Court has clearly held that interestedness is not a ground to discard the evidence if it is well established and founded with corroboration.

5. Learned counsel for the respondents supported the impugned order and objected the maintainability of this revision. He further submits that Criminal Revision against acquittal is not maintainable. Reliance has been placed on **(2019) 2 SCC 752** and this Court's order in CRR No. 619/2013 vide order dated 23.01.2014.
6. Heard learned counsel for both the parties and perused the material available on record.
7. It is clear from the records of both the Courts below that learned trial Court has convicted all respondents for the offence under Sections 147, 448, 332 of IPC and sentenced them to undergo R.I.

for 6 months & fine of Rs. 300/- (for each accused persons), R.I. for 6 months & fine of Rs. 400/- (for each accused persons) and R.I. for 6 months & fine of Rs. 300/- (for each accused persons) respectively, with default stipulation. This order was appealed by the respondents and learned appellate Court vide judgment dated 22.12.2007 allowed the appeal of respondents and acquitted them of all the charges.

8. Section 372 Cr.P.C reads as follows:

“No appeal to lie unless otherwise provided :No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

9. Section 397 of the Code empowers the High Court to call for records of the case to exercise its power of revision in order to satisfy itself as regards correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Section 397 in The Code Of Criminal Procedure, 1973 reads thus:

397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before

any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

And Section 401 in The Code Of Criminal Procedure, 1973 reads thus,

401. High Court's Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are

equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

10. From perusal of statements of Mumtaz Tazia Begum (PW-1), Bharat Lal Sharma (PW-2), Chandrashekhar Jaiswal (PW-3), Fekulal (PW-4), Dr. C.P. Singh (PW-5), Raghunandan Yadav (PW-7), Patiram (DW-1) and Anurag Singh (DW-2), defence offered by respondents is a probable defence and learned appellate Court has found that the prosecution has failed to prove its case beyond reasonable doubt and acquitted the respondents from all the charges. Even otherwise, present is a revision at the instance of

complainant where the scope of interference by this Court in the order of acquittal under revisional jurisdiction is limited. In the matter of *Bindeshwari Prasad Singh v. State of Bihar and another*, 2002 AIR (SC) 2907, the Supreme Court while dealing with the scope of interference in revision against acquittal observed as under:

“13. The instant case is not one where any such illegality was committed by the trial Court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial Court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional justification in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial Court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instance case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of

evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial Court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional Jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering re-trial of the appellants.”

10. On the basis of aforesaid discussions, this Court is of the opinion that the appellate Court has not committed any illegality or irregularity while passing the impugned order acquitting respondents of the charges under Sections 147, 448 & 332 of IPC. The findings recorded by the Court below have been arrived at after due appreciation of the evidence, oral and documentary available on record and, as such, do not require any interference by this Court.

11. Accordingly, the revision being without any substance is liable to be dismissed and is dismissed as such.

**Sd/-
(Rajani Dubey)
Judge**