

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 580 of 2008**

- Dwarika, Aged 29 years, S/o. Sukhlal, R/o. Tendupara, PS Pendra, District Bilaspur (CG)

---- Applicant**Versus**

- State Of Chhattisgarh, Through PS Pendra, District Bilaspur (CG)

---- Respondent

For Applicant	: Shri Dhirendea Mishra, Advocate
For Respondent /State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****19/09/2019**

The present revision arises out of the impugned order and judgment dated 12.08.2008 passed by the Additional Sessions Judge, Pendra Road Civil District Bilaspur in Cr. Appeal No. 34/2008 whereby the learned appellate Court below has confirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate first Class, Pendra Road, Bilaspur vide its judgment dated 29.04.2008 in Cr. Case No. 162/2006 for the offence under Section 326 IPC and sentenced him to undergo RI for three years with fine of Rs. 100/-, plus default stipulation. However, the appellate court has acquitted the applicant of the offence under Section 323 IPC.

2. Facts of the case in brief are that on 10.01.2006, in the morning at about 9.00 am, when the complainant went to the public tap for fetching water, accused/applicant kicked him and when he asked him not to do, applicant went home and came holding axe in his hand, assaulted the complainant as a result of which his thumb got cut and fell down. When the wife and son of the complainant tried to intervene, they were also assaulted by the applicant. Report was lodged by the complainant at police Station Gaurella. Investigation was done and charges were framed against the accused/applicant under Section 324 and 323 IPC.

3. So as to prove the guilt of the accused/applicant, the prosecution has examined 10 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment and order dated 29.04.2008, learned Magistrate has convicted the accused/applicant for the offence under Sections 326 and 323 IPC and has sentenced to undergo RI for three years and one year respectively with fine of Rs. 100/- on both counts, with default stipulations. This order was appealed by the applicant and in the appeal, learned appellate Court has confirmed the conviction and sentence awarded to the applicant under Section 326 IPC but has acquitted him of the offence under Section 323 IPC. Hence, the present revision.

5. Heard counsel for the parties and perused the material on record including the impugned judgment.

6. Counsel for the applicant submits that he is not pressing the revision as far as it relates to the conviction part of the judgment and would confine his argument to the sentence part thereof only. According to the counsel for the applicant, the incident is said to have taken place in the year 2006 and the applicant has already remained in jail for about 1 month and 20 days, looking to the over-all circumstances and the fact that the accused has remained behind the bars for considerable time, it will be just and proper if the sentence awarded by the trial court for offence under Sections 326 IPC and affirmed by the appellate court is reduced to the period already undergone by him, since no useful purpose would be served by sending the applicant again to prison and prayed for leniency. To this, counsel for the State has no serious objection.

7. Now, having regard to the facts and circumstances of this case and that the occurrence having taken place on 10.01.2006, the applicant having suffered incarceration for 1 month and 20 days, this Court feels that while confirming the order of conviction, it would be appropriate to modify and reduce the sentence of imprisonment to the period already undergone by him.

Consequently, the revision is partly allowed. The conviction of the applicant passed by the trial Court and modified by the appellate Court under Section 326 of IPC is hereby modified and instead

thereof, the applicant is sentenced to the period already undergone by him in jail with fine of Rs.5,000/- to be deposited within a period of eight months, failing which they have to undergo six months imprisonment.

Sd/-
(Rajani Dubey)
Judge