

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 332 of 2019**

1. Motilal Banjare S/o Kailash Banjare Aged About 40 Years R/o Chakarbeda, Chowki - Malhar, Police Station - Masturi, District - Bilaspur Chhattisgarh.
2. Akash Banjare S/o Motilal Banjare Aged About 29 Years R/o Chakarbeda, Chowki - Malhar, Police Station - Masturi, District - Bilaspur Chhattisgarh.

---- Applicants**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station - Masturi, District - Bilaspur Chhattisgarh.

---- Respondent

For Applicants	: Shri Yogeshwar Sharma, Advocate
For Respondent/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****14/08/2019**

Present revision arises out of the impugned order of conviction and sentence dated 18.01.19 passed by the Seventh Additional Sessions Judge, Bilaspur in Cr.A. No. 272/2018 whereby the appellate court below has confirmed the order dated 29.10.2018 passed by the Judicial magistrate First Class, Bilaspur in Cr. Case No. 1739/2014 convicting him under Section 452 IPC and sentenced to RI for four days and fine of Rs. 500/- with default stipulation.

2. Brief facts of the case are that on 30.04.2014, at about 8.00 pm,

applicants came out of their house and started hurling abuses to the persons who have stolen their mobiles and on hearing the shouts' complainant Mahesh came out, he was abused and assaulted him with rod and club which he was carrying with him It is stated that when the parents of complainant tried to interfere, they were also assaulted. Complainant lodged FIR against the applicants. After completion of investigation, charge sheet was filed and charges were framed against the applicants under Sections 452, 294, 506 Part II and 323 IPC.

3. So as to prove the guilt of the accused/applicants prosecution has examined 7 witnesses. Statement of the accused were also recorded under Section 313 Cr.P.C. in which he denied the charges levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 29.10.2018, learned Judicial Magistrate First Class has convicted the accused/applicants for the offence under Sections 452, 323, 323 and 323 IPC and sentenced each of them to undergo RI for six months u/s. 452 and RI for three months on each count u/s. 323. This order was appealed by the applicants and in the appeal, complainant and applicants entered into compromise and the appellate court acquitted them of the offence under sections 323 IPC but has convicted them under Section 452 IPC and sentenced them as mentioned above. Hence, this present revision.

5. Counsel for the applicants submits that the impugned order dated 18.01.19 is bad in the eye of law, perverse, erroneous and therefore it is liable to be set aside. Learned court below failed to

appreciate that there are major contradictions and omissions regarding the place of occurrence and apart from that the complainant and the applicants arrived at a compromise without any fear or protest therefore on the basis of said compromise, learned appellate court ought to have acquitted the applicants of the offence under Section 452 IPC. Lastly, learned counsel for the applicant submits that the applicant No.1 is a government servant and applicant No.2 is unemployed and is applying for government job, therefore direction may be issued for reducing the period of sentence already undergone by them. He submits that the applicants have not committed any offence under Section 452 IPC and that they have also entered into compromise for the offence under Section 323 IPC but the court below has committed error in not properly appreciating the evidence. Lastly, it is submitted that the conviction of the applicants would adversely affect their career because the applicant No.1 is in government job and applicant No.2 is though unemployed but applying for government service, therefore it is prayed that benefit under Section 360 Cr.P.C. shall be granted to the applicant so that their service career shall not be affected by their conviction.

6. On the other hand, State counsel supports the impugned judgment and submits that after proper appreciation of evidence, the court below has reached to the conclusion of proving the offence proved against the applicants and therefore does not require any interference.

7. Heard counsel for the parties and perused the material available on record.

8. After going through the material on record and the evidence of the witnesses including Mahesh Ghritlahre (PW-1), Shankarlal Ghritlahre (PW-2), Lakshmin Bai (PW-3), Gita Bai (PW-4), which establishes the involvement of the accused/applicants in the crime in question.

9. Having considered that the applicants and complainant entered into compromise and the appellate court acquitted them of the offence under Section 323 IPC, applicant No.1 is a government servant and applicant No.2 is young, has a long career ahead and applying for government service as also for the reason that both the applicants are first offenders having no criminal antecedent, this Court is inclined to exercise the power under Sections 3,4 and 12 of the Probation of Offenders Act. Therefore, while maintaining their conviction under Section 452 IPC, they are given the benefit of Section 4 of the Probation of Offenders Act, 1958. Accordingly, instead of sentencing them, they are directed to be released on each of them executing a bond for a sum of Rs. 50,000/- to the satisfaction of the trial court within a period of 12 weeks to keep peace and to be of good behaviour for a period of two years from the date of execution of the bond before the court below as well as not to commit any such offence.

10. Section 4 of the Probation of Offenders Act, 1958 (in short "the Act, 1958") confers power on the Court to release certain offenders on probation of good conduct whereas Section 12 empowers the Court to direct removal of disqualification attached to the conviction. Now the next question for consideration is as to whether the judgment of conviction against the applicant No.1 who is a government servant

may disqualify them to hold government service in future and the applicant No.2 who has to go ahead in his career, it is directed that in exercise of power under Section 12 of the Act, 1958, such appellant(s) who are government servants or is going to apply for government service, shall not be affected by their conviction so as to suffer any disqualification in their employment.

11. With the above observation, the revision stands disposed of.

Sd/-

(Rajani Dubey)
Judge