

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on - 30.07.2019****Order delivered on – 20.09.2019****CRR No. 625 of 2009**

- Ajay Shrivastav aged about 33 years S/o Shri Hari Shankar Shrivastav R/o Ward No. 3, Ambagarh Chowky Police Station Ambagarh Chowky District Rajnandgaon (C.G.)

---- Applicant**Versus**

1. State of Chhattisgarh through Officer Incharge P.S. Ambagarh Chowky Rajnandgaon District Rajnandgaon (C.G.)
2. Shri Girdharilal Ladiya aged about 50 years S/o Shri Ram Prasad Ladiya Profession Service R/o High School Bandh Bazar Resident at – Ward No. 3 Ambagarh Chowky District Rajnandgaon (C.G.)

---- Respondents

For Applicant	:	Mr. V.G. Tamaskar, Adv.
For State	:	Mr. Rahul Mishra, Dy. G.A.
For Respondent No.-2	:	Mr. Abhishek Sharma, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****20.09.2019**

1. The applicant/complainant has preferred this revision against the order dated 12.10.2009, passed by the Judicial Magistrate First Class Ambagarh Chowky (C.G.) in Criminal Case No. 211/2005 whereby the learned Judicial Magistrate First Class acquitted the respondent No. 2 from the offence under Sections 294, 323 and 506(II) IPC.

2. Brief facts of the case are that, as per entry made in Rojnamcha Sahna of Police Station, Ambagr Chowky, a Crime No. 41/05 under Sections 294, 323 and 506(II) of the IPC was registered against Respondent No. 2. After investigation, charge-sheet was filed against Respondent No. 2 and charges were framed under Sections 294, 323 and 506(II) of the IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 13 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 innocence and false implication in the case.

4. After hearing the parties, the learned trial court by impugned order dated 12.10.2009, acquitted the accused/respondent No. 2 from the charges under Section 294, 323 & 506(II) of IPC. Hence, this revision.

5. Learned counsel for the applicant submits that the order dated 12.10.2009 is perverse, bad in law and contrary to the evidence on record. The learned Judge has passed the acquittal order ignoring the probative value of FIR and reliable testimony of eye witnesses. He further added that the judgment of acquittal is full of inconsistencies, as such the same is liable to be set aside.

6. On the other hand, learned counsel for the State has also supported the submission of the applicant/complainant.

7. Learned counsel for respondent No.2 supported the impugned order passed by the Court below and submitted that the order passed by the learned trial Court is based on oral and documentary evidence and, therefore, the revision is liable to be dismissed.

8. Heard learned counsel for the parties and perused the material on record including the impugned order.

9. The learned trial Court, after appreciating the oral and documentary evidence, acquitted the respondent from Section 294, 323 and 506-II on the ground that prosecution has failed to prove its case beyond reasonable doubt.

10. Hon'ble Supreme Court in ***Vimal Singh v. Khuman Singh*** reported in ***(AIR 1998 Supreme Court 3380)*** held as under:-

“Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with

judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-Section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court could not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High court in such exceptional cases is to order retrial. In fact, sub-Section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction.”

11. The learned Trial Court, in its judgment, discussed the statements of all the witnesses. The trial Court did not shut down or discard the evidence laid by the prosecution outrightly, on the contrary, the trial Court assessed the entire evidence on record and then came to the conclusion that the prosecution has failed to prove its case

beyond reasonable doubt and acquitted the accused/respondent. In the light of Apex Court's decision Viman Singh (Supra), High Court can interfere with the order of acquittal if it comes within the ambit of exceptional case such as same suffering from glaring illegality etc.

12. Considering this aspect of the case and further considering other evidence available on record, the trial court has come to the conclusion of acquitting the accused/respondent of the charges levelled against him by extending him benefit of doubt. This Court finds no illegality in the order impugned acquitting the respondent particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. Furthermore, in case of revision against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

13. Accordingly, the revision preferred by the complainant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE