

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No. 526 of 2019

- Ayodhya Singh S/o Shri Karan Singh Aged About 48 Years R/o Ward 6, Jaijaipur, Tahsil And Police Station- Jaijaipur, District- Janjgir- Champa, Chhattisgarh

---- Petitioner

Versus

- Harnarayan Chandra S/o Heeramani Chandra Aged About 43 Years R/o Ward No. 6, Ganjipara, Jaijaipur, Tahsil And Police Station- Jaijaipur, District- Janjgir- Champa, Chhattisgarh

---- Respondent

For Petitioner	:	Mr. Ram Kumar Tiwari, Advocate.
For State/respondent	:	Mr. Anupam Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-11-2019

Heard.

1. This petition has been brought being aggrieved by the impugned judgment dated 21.01.2019 passed by the learned 2nd Additional Sessions Judge, Sakti, District- Janjgir-Champa, C.G., in Criminal Appeal No.52/2018.
2. Learned counsel for the applicant submits that a private complaint was filed by the applicant against the respondent before trial Court alleging that on the date of incident, the respondent committed house trespass into the house of the applicant and then he threw away the household articles and also damaged the construction which has caused him to suffer a loss of Rs.5000/-. The trial Court took cognizance in the case and tried the respondent for offence under Sections 427 and 451 of I.P.C. In the judgment dated 15.03.2018 passed by the trial Court. After discussing on the evidence given by the complainant/applicant side, it was held that since there is no Panchanama of the damage caused, therefore, the evidence of complainant was not believable and beyond reasonable doubt. There is no mention regarding the evidence of the

complainant for commission of offence of house trespass under Section 451 of I.P.C. and the respondent was acquitted.

3. This judgment of acquittal was challenged in appeal, in which vide judgment dated 21.01.2019, the judgment of acquittal of the trial Court was upheld and the appeal was dismissed.
4. It is submitted that the trial Court as well as the appellate Court have not made any proper appreciation of the evidence of the complainant of the witnesses and given a perverse finding, therefore, neither of the judgment of the Courts below are sustainable.
5. On perusal of the record of the trial Court and the judgments of both Courts below it is found that neither of the Courts below have made appreciation of the evidence produced by the applicant/complainant. The charges against the respondent were two fold. Firstly, under Section 451 of I.P.C. regarding which there had to be a separate finding which is not given consideration by the trial Court and the appellate Court and secondly, while considering on the charge under Section 427 of I.P.C. neither of the Courts below have given consideration to the statement of the witnesses which has remained unrebutted in their cross-examination. Therefore, the impugned judgment of the appellate Court cannot be regarded as sustainable. Hence, for this reason this revision petition is allowed and the impugned judgment of appellate Court is set aside. As there is a limitation under Section 401 of Cr.P.C. that this Court while exercising the power of a Revisional Court cannot convert a judgment of acquittal into conviction. Therefore, the appeal before the appellate Court is restored to its file and the appellate Court is directed to rehear the arguments on the case and decide the appeal afresh.
6. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge