

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 679 of 2019**

- Hemant Bareth, S/o Naresh Bareth, aged about 25 years, R/o Village-Bhudhwari Chowki, CSEB, Korba, P.S.- Kotwali, Distt.-Korba (C.G.).

---- Applicant**Versus**

- State of Chhattisgarh, through- the District Magistrate, Korba, Distt.- Korba (C.G.).

---- Respondent

For Applicant	:	Shri Awadh Tripathi, Advocate
For Respondent/State	:	Shri Sameer Sharma, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****12.09.2019**

1. The present revision arises out of the impugned judgment of conviction and order of sentence dated 27.03.2019 passed by the Additional Sessions Judge, Katghora, Distt. Korba (C.G.), in Cr. Appeal No. 16/2019 whereby, the learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Katghora, Distt.- Korba vide its judgment dated 26.10.2018 in Criminal Case No. 3143/2018 for the offence under Section 5/15 of Chhattisgarh Kolahal Niyantiran Adhiniyam, 1985 of IPC and sentenced him with fine of Rs. 1000/- and punishment till the rising of Court and also confiscated the sound instruments of the applicant with default stipulation.

2. Brief facts of the case are that on 25.10.2018 at about 21.30 PM, the applicant namely Hemant Bareth was carrying sound instruments 5 pieces of DJ Box Big size, 2 pieces of Bass box Big size & 2 pieces of amplifier on Mahindra Pickup Vehicle bearing No. CG/04JD/3073 and was playing music in such instruments in loud sound without any licence, due to which general public was disturbed and inconvenience was caused by the applicant. On this report, offence has been registered against the applicant. After

completion of investigation, charge-sheet was filed and charges were framed against the applicant under Section 5/15 of C.G. Kolahal Niyantaran Adhiniyam.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 26.10.2018, learned Judicial Magistrate has convicted and sentenced the applicant for the offence under Section 5/15 of C.G. Kolahal Niyantaran Adhiniyam of IPC and sentenced him punishment till the rising of Court with fine of Rs. 1000/- and also confiscated the sound instruments of the applicant with default stipulation. This order was appealed by the applicant and in the appeal, learned appellate Court below has affirmed the conviction and sentence of the accused/applicant as awarded by the learned Judicial Magistrate First Class, Katghora, Distt.- Korba for the offence under Section 5/15 of Chhattisgarh Kolahal Niyantaran Adhiniyam, 1985 of IPC. Hence, the present revision.

5. Learned counsel for the applicant submits that in this case, the learned trial Court below did not ask whether he is willing to hire an advocate on his behalf or not under Section 5/15 of Chhattisgarh Kolahal Niyantaran Adhiniyam, 1985 of IPC. There is no provision of confiscation of sound instrument where both the appellate Courts below overlooked and passed the impugned order of confiscation of the sound instrument of the applicant. Applicant is not an educated person and he was unaware of the judicial procedure, and only on the assurance given by the police, that if he signs before the Court, his equipments will be returned to him and on such assurance, applicant accepted the offence before the learned Judicial Magistrate First Class which is not acceptable in the eyes of law, since he was not asked if he wants to hire an advocate or not and the applicant himself has no idea of having any such right. He further submits that applicant is a sole breadwinner in his house and his livelihood depends only upon confiscated equipments, therefore, order of confiscation is liable to be set aside in the interest of justice.

6. Learned counsel for the State supported the impugned judgment.

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

8. Learned counsel for the applicant submits that, before trial Court, applicant accepted all the charges levelled against him. On his acceptance,

learned trial Court passed the judgment on 26.10.2018 and convicted him of the offence punishable under Section 5/15 of Chhattisgarh Kolahal Niyam Adhiniyam, 1985 of IPC and sentenced him with the fine of Rs. 1,000/- and punishment till rising of the Court. In this judgment, the learned trial Court confiscated the property of applicant which includes 5 pieces of DJ Box Big Size, 2 pieces Base Box Big Size & 2 Pieces Amplifier which was used for playing music. Applicant is very poor person and his livelihood depends only upon confiscated equipments so he is not pressing this petition so far as it relates to the conviction and sentence part of the judgment and would confine his argument to the confiscation thereof only. Order of confiscation is very harsh, so it is liable to be set aside in the interest of justice.

09. Section 17 of the C.G. Kolahal Niyam Adhiniyam, 1985 is as under:-

"Power to order forfeiture of the loud speaker in certain cases- On conviction, the Court trying the offence may order forfeiture of the loud speaker to the Government."

From above definition, it is clear that confiscation is not a mandatory provision. The applicant stated in his prayer that his livelihood depends only upon the confiscated equipments.

10. Considering the facts and circumstances of the case and prayer of the applicant limiting to the consideration of order under Section 452 Cr.P.C., this revision petition is allowed. The order passed by the trial Court and the Sessions Judge with respect to disposal of confiscation of the sound instruments are hereby set aside. The seized property be returned to the applicant after due verification by the trial Court.

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

Sd/-
(Rajani Dubey)
JUDGE