

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 593 of 2013**

- Kamesh S/o Harishchandra aged about 18 years, R/o Dr. Rajendra Prasad Nagar, Khursipar, Bhilai, P.S. Khursipar, Tahsil Durg, Civil and Revenue District-Durg, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : District Magistrate, Durg, Chhattisgarh.

---- Respondent

For Applicant	: Ms. Sareena Khan, From Legal Aid
For Respondent/State	: Ms. Akshara Amit, PL.

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 04.09.2013 passed by the learned 6th Additional Sessions Judge, Durg, District-Durg in Cr. Appeal No. 227/2012 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, Durg, vide its judgment dated 29.09.2012 in Criminal Case No. 749/2011 for the offence punishable under Section 457 of IPC and sentenced him to undergo S.I. for 6 months with fine of Rs. 200/-, plus default stipulation.

2. Brief facts of the case are that on 28.04.2011, complainant lodged a report that on 28.04.2011 at about 22:00 hours, when she was closed the door of the shop and

was sleeping, the present applicant Kamesh entered into the shop for theft the articles of the shop. The complainant cried, as a result the applicant ran away. After completion of investigation, charge sheet was filed and charges were framed against accused/applicant under Section 457 of IPC.

3. So as to hold the accused/applicant guilty, the prosecution has examined as many as 5 witnesses. Statement of the accused/applicant was also recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him and pleaded innocence and false implication in the case.

4. After hearing the parties, vide impugned judgment of conviction and order of sentence dated 29.09.2012, learned Judicial Magistrate First Class has convicted and sentenced the accused/applicant for the offence punishable under Section 457 of IPC and sentenced him to undergo S.I. for 6 months with fine of Rs. 200/-, plus default stipulation. This order was appealed by the applicant and in the appeal, learned Appellate Court has affirmed the conviction and sentence of the applicant. 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 this 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 him, the incident is said to have taken place in the year 2011, and thereby more than 9 years have rolled by since then. The applicant has already remained in jail for more than two months and no useful purpose would be served in again sending him to jail, therefore, in the interest of justice, it would be appropriate if the sentence imposed upon him may be reduced to the period already undergone by him.

7. Learned counsel for the State has no objection to this proposition.

8. Having gone through the material on record and the evidence of the witnesses Yasoda Patel (PW-1), Manoj Sahu (PW-2), Mahendra Kumar (PW-3), Shiv Kumar (PW-4) and Savitri Bai (PW-5), established the involvement of the accused/applicant in the crime in question stands proved beyond reasonable doubt. This Court does not see any illegality in the findings recorded by both the Courts below as regards conviction it is hereby maintained.

9. As regards sentence, keeping in view the facts that incident had taken place in the year 2011, and further that the applicant had already remained in jail for more than two months, therefore, his sentence is liable to be reduced to the period already undergone by him.

10. In view of the above consideration, the revision is partly allowed. While maintaining the conviction of the applicant, he is sentenced to the period already undergone by him. The applicant is on bail. His bail bond will stand discharged.

Sd/-
(Rajani Dubey)
JUDGE