

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1139 of 2016**

- Ramesh Dev @ Fagu S/o Shri Gopal Sahu, aged about 28 years, residence of village Khuteri, Thana Pithoura, Civil & Revenue District Mahasamund (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Mahasamund, District Mahasamund (C.G.)

---- Respondent**And****CRR No. 1140 of 2016**

- Ramesh Dev @ Fagu S/o Shri Gopal Sahu, aged about 28 years, residence of village Khuteri, Thana Pithoura, Civil & Revenue District Mahasamund (C.G.) (C.G.)

----Applicant**Versus**

- State of Chhattisgarh Through : The District Magistrate, Mahasamund, District Mahasamund (C.G.)

---- Respondent

For Applicant : Shri Sumit Shrivastava, Advocate

For Respondents : Ms. Reena Singh, P.L.

Hon'ble Smt. Justice Rajani Dubey**Oral Order****04/09/2019**

1. The CRR No.1139/2016 arising out of Criminal Appeal No. H-78/2016 and CRR No.1140/2016 arising out of Criminal

Appeal No. H-79/2016 are being disposed of by this common order as in these two criminal revisions the applicant is one and same and was prosecuted for the offence punishable under Sections 379/34 and 380/34 of IPC and sentenced to undergo R.I. for one - one year respectively, vide judgment dated 10.08.2016, which was partly allowed by the learned 2nd Additional Sessions Judge, Mahasamund, vide judgments dated 11.11.2016, maintaining the conviction of the applicant and modifying the sentence with fine.

02. Briefly stated case of the prosecution is that the applicant and co-accused committed theft of submersible pump and tullu pump, two cases were registered against the applicant in different crime number and after investigation, two charge sheets were filed against him.

03. Learned trial Court, on the basis of statements of the prosecution witnesses, convicted the applicant under Sections 379/34 and 380/34 IPC in Criminal Case No.353/2015 and 351/2015 and sentenced him to undergo R.I. for 1-1 year respectively. On appeal, the conviction of the applicant has been maintained but the sentence awarded in both the cases (Criminal Case Nos. 353/2015 and 351/2015) has been reduced to R.I. for 6-6 months with fine of Rs.300-300/- plus default stipulation. Hence, the present revision petitions.

04. Learned counsel for the applicant has pressed these revision petitions only on the ground that while imposing sentence of imprisonment on the applicant, both the Courts

below have not taken into consideration the provisions of Section 427 of the Cr.P.C. From perusal of judgment of conviction and order of sentence, it would be clear that the applicant was sentenced to undergo rigorous imprisonment for 6-6 months, for two different offences of similar nature under Sections 379 and 380 of IPC. However, there is no direction that the subsequent sentences shall run concurrently with the previous sentence. In support of his argument, he placed reliance on the judgments in the matters of **Ammavasai and another Vs. Inspector of Police, Valliyanur and Ors¹**, this Court's order dated **03.09.2007** passed in **CRR Nos. 62/2005, 63/2005, 64/2005 and 65/2005, Jai Kishan Vs. State of Haryana² (Punjab and Haryana High Court) vide judgment dated 16.08.2001, Shersingh Vs. State of M.P.³ and Bhogal Vs. State of M.P.⁴**.

05. I have heard counsel for the parties and perused the material available on record.

06. This Court does not find any illegality in the findings recorded by the both the Courts below regarding conviction of the applicant and the conviction of the applicant is being so, hereby maintained.

07. In the matter of **Shersingh** (supra), the Full Bench of M.P. High Court, and in the matter of **Bhogal** (supra), the High

1 AIR 200 SC 3544

2 2001 INDLAW PNH 85

3 1989 Cri.L.J. 632

4 1996 (2) MPWN 111

Court of M.P. has directed that the sentences awarded to the applicant may run concurrently.

08. The Hon'ble Apex Court, in the matter of **Ammavasai** (supra), while dealing with the conviction under Section 395 of the IPC and sentence of seven years' R.I. in four cases, has directed that the appellants shall undergo total period of 14 years imprisonment in respect of all convictions passed against them.

09. Learned counsel for the applicant submits that the applicant has remained in jail for more than four months in connection with different crime numbers in both cases.

10. In the light of Hon'ble Apex Court judgment and the order of this High Court, it is, therefore, directed that the sentence of R.I. for 6-6 months in Criminal Case Nos.351/2015 and 353/2015, shall run untelescoped by any other sentence imposed upon him subsequently. In other words, the sentence imposed in subsequent cases would start running only on the termination of the sentence imposed upon him in the aforementioned criminal cases (Criminal Case Nos. 353/2015 and 351/2015).

11. It is further directed that the sentence of R.I. for 6-6 months imposed upon the applicant in the following two cases shall run concurrently.

(a) Criminal Case No. 353/2015 (Criminal Appeal No. H 78/2016) in the Court of Judicial Magistrate First Class Pithoura, District

Mahasamund.

(b) Criminal Case No.351/2015 (Criminal Appeal No.H 79/2016) in the Court of Judicial Magistrate First Class, Pithoura, District Mahasamund.

However, the fine imposed on the applicant by the appellate Court in the aforementioned cases shall remain as it is.

12. As regards sentence, keeping in view the fact that the applicant is in jail for more than four months in two cases, and further considering the fact that the applicant has already faced a prolonged trial and suffered trauma of uncertainty arising out of his conviction by the Courts below, the jail sentence is reduced to the period already undergone by him. The sentence of fine is affirmed. The applicant is on bail, his bail bond shall stand discharged.

13. In the result, the revision is allowed in part to the extent indicated herein above.

Sd/-

(Rajani Dubey)
JUDGE

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