

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 557 of 2016**

1. Tulsiram Sahu S/o Pancham Singh Aged About 62 Years R/o Village Tilkhehri, Police Station Arjunda, District Balod Chhattisgarh
2. Bhuwan Lal Sahu S/o Late Gangaram Aged About 58 Years Assistant Sub Inspector, R/o New Police Line, Qtr. No. 22, Durg, District Durg Chhattisgarh

**---- Petitioners****Versus**

1. Smt. Rambai W/o Poshan Lal Aged About 49 Years R/o Village Tilkhehri, Police Station Arjunda, District Balod Chhattisgarh
2. State Of Chhattisgarh Through District Magistrate, Balod, District Balod Chhattisgarh

**---- Respondents**


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| For Petitioners | : | Shri B.P. Singh, Advocate with Shri Shikhar Bakhtiyar, Advocate |
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| For Respondent/State | : | Shri Anant Bajpai, PL for the State |
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**Hon'ble Shri Justice Goutam Bhaduri****Order On Board****24/01/2019**

1. Heard.
2. The present petition has been filed against the order dated 16.03.2016, passed in Criminal Revision No.3/2016 by the Second Additional Sessions Judge, Balod, District Balod (C.G.) preferred by the petitioners against the order dated 15.12.2015, whereby an application under Section 300 Cr.P.C., which was

dismissed by the trial Court, said order was affirmed by the revisional Court.

3. Facts of this case are that the respondent No.1 Smt. Rambai made a report for an incident happened on 15.05.2000 that while she was sleeping in the courtyard, petitioner No.1 Tulsiram Sahu entered there, woke her up and stated that he loves her. Having asked the question that who is he, it was stated that he was her husband. Thereafter, she called her son and other family members, whereupon Tulsiram Sahu fled away to hide himself into the bush. On that report, petitioner No.1 Tulsiram Sahu was tried under Section 509 IPC, wherein her statement was recorded before the trial Court on 12.08.2002 and the statements of other witnesses were recorded subsequently. By order dated 25.01.2006, he was convicted in criminal case No.788/2005 by the JMFC, Durg and a fine of Rs.500/- was awarded. Being aggrieved by such order, the appeal was preferred before the Sessions Judge, Durg and the Sessions Judge, Durg by its order dated 19<sup>th</sup> of September, 2006 acquitted Tulsiram Sahu from the charges on the ground that the prosecution has failed to prove that the offence has been committed.
4. Thereafter, both the petitioners received a notice from the JMFC, taking cognizance of the similar offence, wherein it was alleged that the complaint which was made to the police was not recorded verbatim by the police as offence for criminal trespass was also added along with the fact that the police officials have not registered the offence. After appearance, an application under Section 300 Cr.P.C. was filed by both the petitioners. The petitioner No.1 Tulsiram was earlier acquitted of the charges under Section 509 IPC, whereas

petitioner No.2, it was alleged that he acted as a constable, who did not write the report properly. It was stated in the application under Section 300 Cr.P.C. that once the incident has been negated by the appellate Court and petitioner No.1 Tulsiram has been acquitted there cannot be any second trial for the same incident as the incident was one and the same. JMFC dismissed the application under Section 300 Cr.P.C., the same subject was taken up in the revision and the revisional Court by its order dated 16.03.2013 has dismissed the revision by holding that the earlier acquittal of Tulsiram Sahu under Section 509 IPC will not have an implication for the allegation as the complaint alleges that the petitioner No.1 Tulsiram Sahu entered into her house, whereby the criminal trespass was committed and in respect of petitioner No.2 it was held that petitioner No.2 was never tried in any offence, therefore, the earlier acquittal of petitioner No.1 Tulsiram Sahu under Section 509 IPC will not have any bearing on the issue, therefore, second complaint would be maintainable.

5. Learned counsel for the petitioners would submit that under the circumstances, if one accused is tried and acquitted then subsequently a different story cannot be set to motion as it will not lead to any finality at any time. It is stated that while the statement of the complainant was recorded before the trial Court in the State case, she did not disclose the fact that another complaint has been preferred instead after the orders were passed, again a complaint on the different issue has been tried to be brought to fore. Therefore, if the said procedure is allowed then it will have a larger bearing and every complainant would have a recourse to the similar type of tactics, it will be a never ending

criminal trial.

6. Per contra, learned State counsel opposes the arguments and submits that the order of the Court below is well merited, which do not call for any interference.
7. Perused the documents attached with this petition. Perusal of the record would show that initially a complaint was made by the respondent No.1/complainant with an allegation that Tulsiram Sahu has uttered the obscene words to her. On the basis of such report, a trial was held. The JMFC, Durg in a criminal case No.788/2005 by order dated 25.01.2006 convicted Tulsiram Sahu and imposed a fine of Rs.500/- under Section 509 IPC. It was a State case, wherein statement of respondent was recorded on 12.08.2002. In such statement she has not stated that another complaint is pending. In the complaint case, which was filed, her statement was recorded on 09.02.2001. The complaint is on record which was filed under Section 200 on 28.11.2000.
8. The facts if are examined on series would show that on 12.08.2002 while the respondent/complainant was examined in State case this fact was not disclosed that another complaint was filed and statement has been recorded. In the State case while the conviction was made imposing a fine of Rs.500/-, it was subject of challenge by Tulsiram Sahu in a criminal appeal No.76/2006, wherein the Sessions Judge, Durg by order dated 19<sup>th</sup> of September, 2006 acquitted Tulsiram Sahu and it was held that no offence was committed under Section 509 IPC and further it was observed that Rambai had not made any report that on the date of incident Tulsiram Sahu entered into the house with intend to

commit theft. Thereby, held criminal trespass was not committed. The order of the Sessions Judge, therefore, takes into sweep the finding that no criminal trespass was committed.

9. Subsequently, on the basis of the complaint made, the Court took the cognizance, wherein the application under Section 300 Cr.P.C. was filed, which eventually stand dismissed and subject of revision and challenge before this Court. In the facts and circumstances of this case, this fact cannot be ignored that one of the petitioner was acquitted of the charge of Section 509 IPC, wherein, certain observation was made that he has not made any criminal trespass as no report was made. Admittedly, the State has not preferred any appeal, therefore, finding to that effect shall have a judicial binding on the subsequent event. The complaint which was filed by the respondent also pertains to the same date of incident on the intervening night of 14-15.05.2000, therefore, if such practice is allowed to be assailed by the complainant, then in such case, there would be hardly any finality to the criminal trial.

10. The conduct of the complainant would show that she was agile enough of the fact to file a complaint, therefore, it is also expected that while she was examined in the State case, she was expected to disclose the fact that another complaint has been filed. The victim cannot be allowed to sit on the fence and watch the proceedings and come out with her complaint with added version at later stage as and when feels free. In the Statement before the State if such fact has not been disclosed properly and the complaint when comes out on the subsequent stage that the additional offence has been committed, it would be a

fatal preposition to accept. Therefore, after examination of the record, I am of the opinion that both the Courts below fell into error as conduct of the complainant also become utmost important apart from that of the accused. In order to get the justice, the complainant should also be fair to the Court and hide & seek if are adopted, then the Court will also be helpless. In such background of facts, the petition is allowed and the order dated 16.03.2016 is set aside. In a result, the application under Section 300 Cr.P.C. is also allowed. The petitioners are acquitted of the charges of the criminal incident. This order shall not be considered as an precedent.

Sd/-

Goutam Bhaduri  
Judge

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