

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1090 of 2018

Dheerendra Kumar Gupta, aged about 43 years, son of late Prakash Sahu, R/o Village Kudeli, Police Station Patna, Tahsil Baikunthpur, District Korea, Chhattisgarh

---- Applicant

versus

1. The State of Chhattisgarh through the District Magistrate, Balrampur, District Balrampur – Ramanujganj, Chhattisgarh
2. Savita Gupta, wife of Shri Dheerendra Kumar Gupta, aged about 34 years, Caste Teli, R/o Village Nagar, Wadrafnagar, Tahsil Wadrafnagar, Police Station Basantpur, District Surguja, Chhattisgarh

--- Respondents

For Applicant	:	Ms. Laxmin Kashyap, Advocate
For State/Respondent No.1	:	Ms. Smriti Shrivastava, Panel Lawyer
For Respondent No.2	:	Ms. Soniya Kuldeep, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

4.4.2019

1. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. By the judgment dated 7.4.2018 passed in Complaint Case No.204 of 2013, the Judicial Magistrate First Class, Wadrafnagar, District Balrampur-Ramanujganj convicted the Applicant for the offence punishable under Section 494 of the Indian Penal Code and sentenced him with simple imprisonment for 2 years and fine of Rs.1,000/- with default stipulation.
3. Against the judgment of conviction and sentence dated 7.4.2018, an appeal, being Criminal Appeal No.23 of 2018 was preferred by the Applicant before the Sessions Judge, Balrampur at Ramanujganj. On 1.5.2018, the appeal had been admitted by the Appellate Court for final hearing. In the appeal, the Applicant had

not made the Complainant as a party-Respondent. Therefore, he moved an application before the Appellate Court for withdrawal of his memo of appeal. Thereafter, by the impugned order dated 20.9.2018, the Appellate Court dismissed the appeal on the ground that the present Applicant does not want to make out his case in appeal and he has not made the Complainant as a party-Respondent in the appeal. While dismissing the appeal, the Appellate Court affirmed the conviction and sentence of the Applicant. Hence, this revision by the Applicant.

4. I have heard Learned Counsel appearing for the parties and perused the records with due care.
5. Section 385 of the Code of Criminal Procedure prescribes certain procedures regarding appeals, which read thus:

“385. Procedure for hearing appeals not dismissed summarily.—(1) If the Appellate Court does not dismiss the appeal summarily, it shall cause notice of the time and place at which such appeal will be heard to be given—

- (i) to the appellant or his pleader;
- (ii) to such officer as the State Government may appoint in this behalf;
- (iii) if the appeal is from a judgment of conviction in a case instituted upon complaint to the complainant;
- (iv) if the appeal is under section 377 or section 378, to the accused, and shall also furnish such officer, complainant and accused with a copy of the grounds of appeal.

(2) The Appellate Court shall then send for the record of the case, if such record is not already available in that Court and hear the parties:

Provided that if the appeal is only as to the extent or the legality of the sentence, the Court may dispose of the appeal without sending for the record.

(3) Where the only ground for appeal from a conviction is the alleged severity of the sentence, the appellant shall not, except with the leave of the Court, urge or be heard in support of any other ground.”

6. As provided in Section 385(1)(iii) of the Code of Criminal Procedure, hearing of the Complainant is mandatory in an admitted appeal preferred against the conviction imposed in a complaint case. The case in hand has also arisen out of conviction in a complaint case, but the Complainant was not made a party in the appeal preferred before the Appellate Court. Therefore, the Applicant preferred an application before the Appellate Court for withdrawal of the memo of appeal for making the Complainant a party-Respondent in that appeal. But, the Appellate Court, without deciding the said application, dismissed the appeal and affirmed the conviction and sentence of the Applicant.
7. In **(1996) 4 SCC 720 (Bani Singh v. State of U.P.)**, it has been held by the Supreme Court that once the Appellate Court has admitted an appeal to be heard on merits, it cannot dismiss the appeal for non-prosecution for non-appearance of the Appellant or his Counsel and the appeal must be disposed of on merits after examining record of the case and after giving a hearing to the Appellant or his Counsel if he is present, and to public prosecutor before disposal of the appeal on merits. But, in the case in hand, the Appellate Court, after admitting the appeal for final hearing, dismissed it only on the ground that the Appellant/present Applicant did not want to make out his case and without deciding the appeal

on merits affirmed the conviction and sentence of the Appellant/Applicant despite the fact that the Applicant had submitted an application for withdrawing his memo of appeal for the purpose of impleading the Complainant as a party-Respondent in the appeal. The Appellate Court ought to have allowed the application for withdrawal of the memo of appeal or ought to have decided the appeal on merits. Therefore, the impugned order dated 20.9.2018 passed by the Appellate Court is held to be against the provisions of law.

8. Consequently, the revision is allowed. The impugned order dated 20.9.2018 passed by the Sessions Judge/Appellate Court is set aside. The matter is remanded back to the Sessions Judge to decide the application moved by the Applicant for withdrawal of the memo of appeal in accordance with law or to decide the appeal on merits.
9. Records of the Courts below be sent back along with a copy of this order for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
Judge