

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1127 of 2019**

- Shankar Lai Chandra S/o Johan Lal Chandra Aged About 37 Years Resident Of Salaunikala, O.P. Bhatgaon, Police Station Bhilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through Station House Officer Bhatgaon, District Balodabazar Bhatapara Chhattisgarh.
2. Dev Prasad Shrivastava S/o Mahettar Lal Shrivastava Aged About 38 Years R/o Salaunikala, O.P. Bhatgaon, Police Station Bhilaigarh, District Baloda Bazar Bhatapara Chhattisgarh.

---- Respondents

For Applicant	:-	Shri Naveen Nirala, Advocate
For Respondent-State	:-	Shri Ashish Gupta, PL

**Hon'ble Shri Justice Prashant Kumar Mishra &
Hon'ble Shri Justice Gautam Chourdiya**

Order On Board**By****Prashant Kumar Mishra, J.****17/09/2019**

1. On due consideration delay of 125 days in filing the criminal revision is condoned. Accordingly, I.A. No.01/2019, application for condonation of delay occurred in filing the criminal revision is

allowed.

2. Heard learned counsel for the applicant on admission.
3. The Criminal Revision is directed against the judgment of acquittal rendered by the Second Additional Sessions Judge., Balodabazar in CRA No.895 of 2010. The Sessions Court has allowed the Criminal Appeal and resultantly the accused/respondent No.2 namely; Dev Prasad Shrivastava has been acquitted of the charges under Section 420, 467, 468, 471 of I.P.C. for which he was convicted by the trial Court/Judicial Magistrate First Class Bhatgaon, District Balodabazar on 16.05.2018 in Criminal Case No.895 of 2010.
4. Accused – Dev Prasad Shrivastava was sent for trial for subject offence on the allegation that in the year 2005-06 he obtained appointment as Shiksha Karmi Grade- III on the basis of forged mark sheet. The subject FIR was lodged by one Ramdular Tandon. In course of trial, the present applicant namely; Shankar Lai Chandra was examined as a witness (PW-1). He is neither the employer nor would have been benefited had the accused not been appointed as Shiksha Karmi Grade- III.
5. In this view of the matter, the issue which needs to be considered is -

Whether the present Criminal Revision preferred by a witness, challenging the order of acquittal, would be maintainable?

6. The appeal against acquittal under Section 372 Cr.P.C. can be filed by a 'victim' whereas a revision under Section 397 read with Section 401 Cr.P.C. to challenge an order of acquittal can be filed by a private complainant or by a victim but again a 'witness' has no locus to prefer revision against Appellate order of acquittal.
7. In the matter of **Mallikarjun Kodagali (Dead) vs. State of Karnataka & Ors.** in 2019 2 SCC 752, the Hon'ble Supreme Court was dealing with victim's right to file appeal against acquittal. It is held therein that a 'victim' as defined in under Section 2 (wa) Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction.
8. When the victim's right to file an appeal is not in dispute, the debatable issue is whether a witness in a criminal case would be covered within the term 'victim' so as to confer upon him right to prefer an appeal against acquittal under Section 372 or a revision under Section 397 read with Section 401 Cr.P.C.
9. Section 2 (wa) of the Cr.P.C. defines the term 'victim' in the following manner :

“ “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”

10. Plain reading of the above definition of the term 'victim' would manifest that a victim is a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged. The witness in a criminal case may also be a victim in a given case only if he has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged, however, if no such loss or injury is caused to a witness, he has no right to prefer any appeal or revision against acquittal merely for the reason that he was also interested in ensuring conviction of the accused.

11. A criminal trial is not in the nature of *pro-bono*. Even if society at large is effected or interested to secure conviction of accused, the prosecution is initiated and conducted by the State on behalf of the society. It can never be stretched to an extent that any person who was involved in the investigation or was presented by the prosecution as a witness would be covered within the term 'victim' only for reason that he being a member of society is also interested in securing conviction.

12. The right to file an appeal is not a mere matter of procedure but a substantive right and it shall not be easily recognized unless specifically conferred by the statute. This is a settled legal position as has been held by the Supreme Court in the matter of **Garikapati Veeraya vs. N. Subbiah Choudhry & Ors.** in AIR 1957 SC 540 and reiterated in Mallikarjun Kodagali (Supra) vide

paragraph 69:

“69. It was submitted by learned counsel for the accused that the right to file an appeal is a substantive right and it should not be easily recognized unless specifically conferred by statute. We agree. There is no doubt that from the time of the Constitution Bench decision of this Court in *Garikapati Veeraya v. N. Subbiah Choudhry* it has been held that the right to appeal is not a mere matter of procedure but is a substantive right. We are bound by this decision as well as other decisions following this view. The question is whether this substantive statutory right has been conferred on the victim in a case such as the present.”

13. In similar manner right to prefer a revision against conviction is also not a mere matter of procedure but a right which is conferred on the State or the victim and not on any other person. Such right is secured for the private complainant in a criminal trial which was set in motion by him.

14. In a recent judgment rendered by the Division Bench of Bombay High Court in the matter of **Mahendrasinh Jorubha Zala vs. Central Bureau of Investigation & Ors.** in CRA No.970 of 2019 decided on 05.08.2019, a similar view has been taken that a 'witness' cannot be termed as a 'victim' as defined by Section 2 (wa) of Cr.P.C.

15. In its earlier judgment the Supreme Court in the matter of **Arcot Textile Mills Limited vs. Regional Provident Fund Commissioner & Ors.** in (2013) 16 SCC 1 has held that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there

must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the Court is bound to follow the express words.

16. In view of the aforesaid, this revision application against the order of acquittal, preferred by a 'witness', who is not a 'victim', is not maintainable in law.

17. Accordingly, the same is liable to be and is hereby dismissed at the threshold.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge

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Head Note

A 'witness', who is not a 'victim' as defined under Section 2(wa) of Cr.P.C., is not entitled to maintain an appeal or revision against acquittal.