

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1105 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1115 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1132 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1160 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1163 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1164 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1166 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1167 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Another

Respondents

CRR No. 1168 of 2018

Dr. Pawan Kumar Tiwari

Applicant

Versus

State of Chhattisgarh & Others

Respondents

Post for pronouncement of the order on 27.09. 2019

**Sd/-
JUDGE**

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 01.08.2019****Order Delivered on : 27/ 09 /2019****HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1105 of 2018**

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara Sarkanda, Police Station Sarkanda Bilaspur Chhattisgarh.

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Police Station City Kotwali Bilaspur District Bilaspur Chhattisgarh.
2. Ashutosh Pandey S/o Laxmikant Pandey Aged About 40 Years R/o A/7 Rajaswa Colony Sarkanda Police Station Sarkanda, District : Bilaspur, Chhattisgarh

---- Respondents**CRR No. 1115 of 2018**

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara, Sarkanda, Police Station- Sarkanda, District : Bilaspur, Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Police Station- City Kotwali, Bilaspur, District- Bilaspur, Chhattisgarh.
2. Avinash Pandey S/o Harishankar Pandey Aged About 32 Years R/o A/7, Rajaswa Colony, Police Station- Sarkanda, Bilaspur, Chhattisgarh.

---- Respondents**CRR No. 1132 of 2018**

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara, Sarkanda, Police Station Sarkanda, Bilaspur, Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur, District - Bilaspur, Chhattisgarh.
2. Sharad Kumar Dewangan S/o Shri Ramlal Dewangan Aged About 40 Years R/o Karbala Road Opp. Ramkumar Painter Police Station City Kotwali, Bilaspur, Chhattisgarh.

---- Respondents

CRR No. 1160 of 2018

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Village Jorapara, Sarkanda, Police Station Sarkanda Bilaspur

---- Applicant

Versus

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur District Bilaspur Chhattisgarh,
2. Raghunandan Prasad Sharma S/o Ramadhar Sharma Aged About 36 Years R/o Ashok Nagar, Sarkanda, P. S. Sarkanda, Bilaspur Chhattisgarh

---- Respondents

CRR No. 1163 of 2018

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara ,Sarkanda, Police Station Sarkanda Bilaspur Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through The Police Station City Kotwali District Bilaspur Chhattisgarh.
2. Ramlakhan Pandey S/o Shri Rajendra Pandey Aged About 40 Years R/o C/o Vinod Kaushik, near Little Flower School Om Nagar Bilaspur, Police Station City Kotwali Bilaspur Chhattisgarh.

---- Respondents

CRR No. 1164 of 2018

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara, Sarkanda, Police Station Sarkanda, Bilaspur Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur, District Bilaspur Chhattisgarh
2. Smt. Rashmi Parihar W/o Ramesh Singh Parihar Aged About 49 Years R/o Kosa Karkhana Road, Chhoti Koni, Police Station Koni Bilaspur Chhattisgarh

---- Respondents**CRR No. 1166 of 2018**

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara, Sarkanda, Police Station Sarkanda, Bilaspur Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur, District Bilaspur Chhattisgarh
2. Vikash Gulhare S/o Goverdhan Gulhare Aged About 34 Years R/o Opposite Samudayik Bhawan, Gondpara, Police Station Kotwali, Bilaspur, District Bilaspur Chhattisgarh

---- Respondents**CRR No. 1167 of 2018**

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara, Sarkanda, Police Station Sarkanda, Bilaspur Chhattisgarh

---- Applicant**Versus**

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur, District Bilaspur Chhattisgarh

2. Kumari Shweta Shrivastava D/o R. D. Shrivastava Aged About 41 Years R/o Near Shiv Temple, Vidya Nagar, P. S. Tarbahar, District Bilaspur Chhattisgarh

---- Respondents

CRR No. 1168 of 2018

- Dr. Pawan Kumar Tiwari S/o Late Kamta Prasad Tiwari Aged About 68 Years R/o Jorapara Sarkanda, Police Station Sarkanda Bilaspur Chhattisgarh.

---- Applicant

Versus

1. State Of Chhattisgarh Through The Police Station City Kotwali, Bilaspur Chhattisgarh.
2. Smt. Snehlata Mishra, W/o Shri Manoj Mishra Aged About 36 Years R/o Triveni Nagar New Sarkanda Jabdapara, Police Station Sarkanda, Bilaspur Chhattisgarh.
3. Richa Pandey W/o Naresh Pandey Aged About 32 Years R/o B-17, 2nd Floor, Shakuntala Heights, Police Station Sarkanda, Bilaspur Chhattisgarh.
4. Smt. Renu Nair, W/o Shri Vinit Nair, Aged About 41 Years, R/o Vidhya Nagar, near Gayatri Mandir, Police Station Tarbahar, Bilaspur Chhattisgarh.
5. Dr. Urja Ranjana Sinha W/o Ravi Ranjana Sinha Aged About 40 Years R/o B-10 Phase -II Rajkishore Nagar Police Station Sarkanda, Bilaspur Chhattisgarh.
6. Sumno Bhattacharya W/o Dhruv Bhattacharya, Aged About 35 Years, R/o C-20 Phase -II Rajkishore Nagar, Police Station Sarkanda, Bilaspur Chhattisgarh.
7. Rajni Kujur, W/o T.Kujur, Aged About 37 Years R/o Kalpana Vihar Nehru Nagar, Police Station Civil Lines, Bilaspur Chhattisgarh.
8. Dr. Abha Tiwari W/o Shri Anubhav Tiwari Aged About 35 Years R/o MIG -21 ,Laxmi Niwas, Koni Road, Police Station Sarkanda Bilaspur Chhattisgarh.
9. Smriti Prakash, W/o Vijay Prakash Aged About 33 Years, R/o Near Mahila Thana, Police Station Civil Lines, Bilaspur Chhattisgarh
10. Tosima Mishra W/o Shri Sanjay Mishra Aged About 37 Years R/o Near Shiv Temple, Vidya Mandir Police Station Tarbahar,

Bilaspur, Chhattisgarh.

11. Shweta Shrivastava D/o R.D. Shrivastava Aged About 35 Years R/o Near Shiv Temple, Vidya Nagar, Police Station Tarbahar Bilaspur, Chhattisgarh.
12. Shruti Somvanshi W/o Ravi Singh Somvanshi Aged About 37 Years R/o H.S.Chandel, Bindro Kunj, Vinod Nagar, Police Station Tarbahar, Bilaspur Chhattisgarh.
13. Ajay Yadav S/o S.R. Yadav Aged About 40 Years R/o Near Radha Krishna Temple Shankar Nagar Police Station Torwa Bilaspur, Chhattisgarh.
14. Shailendra Kumar Tiwari S/o D.P. Tiwari Aged About 43 Years R/o Kapil Nagar Police Station Sarkanda, Bilaspur Chhattisgarh
15. Nimish Choubey W/o Shyam Charan Choubey Aged About 40 Years A/249 Ageya Nagar, Police Station Civil Lines, Bilaspur Chhattisgarh.
16. Jayant Rai S/o Late K.N. Rai Aged About 41 Years R/o Hemu Nagar, Police Station Torwa Bilaspur Chhattisgarh
17. Ashutosh Pandey S/o Laxmikant Pandey Aged About 35 Years R/o Sector II Ganga Nagar, Shiv Mandir, Mangla Road, Police Station Civil Lines Bilaspur, Chhattisgarh.
18. Sudhir Sen S/o R.B. Sen Aged About 50 Years R/o 17/361, sarju Bageecha, Police Station Civil Lines Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
19. Dipak Tiwari S/o Girja Shankar Tiwari Aged About 46 Years R/o Tiwari Chal, Jarhabhata, Police Station Civil Lines, Bilaspur Chhattisgarh.
20. A. Sriram S/o A.J. Mohan Rao Aged About 38 Years R/o Ramdas Nagar, Tikrapara Police Station Kotwali Bilaspur Chhattisgarh.
21. Prof. Sonal Tiwari S/o Late Ram Pratap Tiwari Aged About 45 Years R/o C/37, Parijat Extension (Wrongly Mentioned As Station) Police Station Civil Lines Bilaspur Chhattisgarh.
22. Avinash Pandey S/o Harishankar Pandey Aged About 32 Years R/o A/7 Rajaswa Colony, Police Station Sarkanda Bilaspur Chhattisgarh.
23. Dr. R.N. Yadav S/o Late Radheshyam Yadav Aged About 49 Years R/o Bangalipara No. 4 Police Station Sarkanda Bilaspur Chhattisgarh.
24. Sharad Kumar Dewangan S/o Ramlal Dewangan Aged About 40 Years R/o Karbala Road, opposite Ram Kumar Painter, Police Station Kotwali Bilaspur Chhattisgarh

25. Raj Kumar Yadav S/o Late Shri Mewalal Yadav Aged About 32 Years R/o Surya Chowk, Chingrajpara, Police Station Kotwali Bilaspur Chhattisgarh.
26. Khagendra Soni S/o Late Nanki Ram Soni Aged About 44 Years R/o Madhuvan Road Dayalband Police Station Kotwali Bilaspur Chhattisgarh.
27. Balraj Motwani S/o Shri G.K. Motwani Aged About 44 Years R/o Flat No. 401 Saptrishi Apartment, Police Station City Kotwali Bilaspur Chhattisgarh.
28. Pawan Sharma S/o Ramkrishna Sharma Aged About 46 Years R/o Near Sai Mandir Gondpara, Police Station Kotwali, Bilaspur Chhattisgarh.
29. Vikas Gulhare S/o Goverdhan Aged About 34 Years R/o Opposite Samudayik Bhawan, Gondpara, Police Station Kotwali Bilaspur Chhattisgarh.
30. Raghunandan Prasad Sharma S/o Ramadhar Sharma Aged About 36 Years R/o Ashok Nagar Sarkanda Police Station Sarkanda, Bilaspur Chhattisgarh.
31. Ram Lakhan Pandey S/o Rajendra Pandey Aged About 35 Years R/o Near Sahu Kirana Dukaan, Kapil Nagar, Police Station Sarkanda Bilaspur Chhattisgarh
32. Dr. Suchi Choudhry, W/o Shri Ritesh Choudhary Aged About 37 Years R/o 152 ,kunj Bhawan Gondpara, Police Station Kotwali Bilaspur Chhattistgarh.,
33. Smt. Rashmi Parihar W/o Ramesh Singh Parihar Aged About 44 Years R/o Kosa Karkhana Road, Chhoti Koni, Police Station Koni Bilaspur Chhattisgarh.
34. Shiv Narayan Patel S/o S/o Awadh Ram Patel Aged About 35 Years R/o Bhakurra Nayapara, Police Station Tarbahar, Bilaspur Chhattisgarh.
35. Priyanka Mishra S/o Baban Lal Mishra Aged About 33 Years R/o Mama Bhanja Talab Dukan Tikrapara, Police Station Kotwali Bilaspur Chhattisgarh.

---- Respondents

For Applicants	: Shri B.P.Sharma, Advocate
For Respondent No.1/State	: Shri Anant Bajpai, PL
For Respondents	: Shri Anurag Dayal Shrivastava and Shri Abhyuday Singh, Advocates

Hon'ble Smt. Justice Rajani Dubey**C A V Order****27/09/2019**

As all these revision petitions arise out of the common judgment and order dated 01.09.2018, they are being disposed of by this order.

Challenge in the present revision petitions is to the judgment and order dated 01.09.2018 passed by the Sixth Additional Sessions Judge, Bilaspur in Cr. A. Nos. 138/18, 137/18, 132/18,136/18,131/18, 133/18,134/18,135/18 and 139/2018 whereby the court below has acquitted the accused/respondents of the offence under Sections 294 IPC as awarded by the Judicial Magistrate First class, Bilaspur and sentencing them with fine of Rs. 500/- with default stipulation.

2. Brief facts of the case are that complainant (applicant herein) filed FIR against the respondents in the aforesaid revision petitions on 08.02.2012 on the ground that on the said date at about 2.30 p.m. all the respondents have entered his room at D.P.Vipra College, Bilaspur and abused him, threatened and tried to interfere in his work. Applicant filed report against all the respondents at Police Station City Kotwali who registered offence under Sections 147, 294 and 506 IPC and after investigation, charge sheet was filed against the accused persons (respondents herein) in all the petitions and charges were framed.

3. Prosecution has examined 4 witnesses in support of its case. Statements of the respondents were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charges levelled against them and pleaded false implication in the case.

4. After hearing the parties, the trial Court, vide its judgment dated 22.06.2018 has acquitted the accused/respondents of the offence punishable under Sections 147,506 IPC and convicted them under Section 294 IPC and sentenced with fine of Rs. 500/- with default stipulation. This order was appealed by the respondents and in the appeal, learned appellate court acquitted them under Section 294 IPC. Hence, the present revisions by the applicant, assailing the acquittal.

5. Counsel appearing for the applicant submits that the judgment and order passed by the appellate court is perverse and not sustainable in law. He submits that these are the cases where the educational institution has been rampaged by its constituents i.e. Professors and when the culprits are the persons imparting education, the matter should be looked into with all seriousness and in the present case, adoption of such serious approach is absent and therefore invocation of appropriate jurisdiction by this Court is called for. He submits that all the witnesses have stated about hurling of abusive language at public place and therefore charges under Section 294 IPC has been made out and the acquittal of respondents from the said charge by the appellate court is bad in the eye of law. The prosecution has proved all the ingredients of the offence under Section 294 IPC. Merely the words actually uttered have not been used while deposing being the person concerned who are also the persons imparting education, it cannot be said that abusive language has not been used in public place as has been held by the courts below while acquitting the respondents. The acquittal of the respondents amounts to denial of justice to the victims and therefore the judgment is liable to be set aside.

6. On the other hand, counsels appearing on behalf of the respondents in all the revisions objected on the ground that the applicant is a victim and have stated that the revision against acquittal order filed by the victim is not maintainable. Reliance has been placed in the matter of **Roopendra Singh Vs. State of Tripura and Others (2017) 13 SCC 612** and **Mallikarjun Kodagali (dead) Represented through Legal Representatives Vs. State of Karnataka and Others (2019) 2 SCC 752**.

7. Counsel for the applicant submits that the High Court has power to set aside the order of acquittal. Reliance has been placed in the matter of **Ganesha Vs.. Sharanappa And Another (2014)1 SCC 87**; **The Queen Vs. Saunders and Hitchcock (Queens Bench Division) Vol. 1 15, Nov. 13, 1875**; **Hasimuddin Mondal Vs. Golam Mahabub & Others (1987) SCC Online Cal. 234:(1988)1 CHN 216:1988 Cri. LJ 1900, Criminal Revision No. 1678 of 1981**; **Gopal Chandra Sahu & Gopal Sahu Vs. Choudhury Behera and Others reported in 1988 SCC Online Ori. 130:1989 Cri.LJ 1616:(1988) 66 CLT (SN55) 37 in Criminal Revision No. 60 of 1988** and in the matter of **National Human Rights Commission Vs. State of Gujarat & Others** reported in W.P. (Cri.) No. 109 of 2003 (SCC Online).

8. Heard counsel for the parties and perused the material available on record.

9. It is clear from the records of both the courts below that the learned trial court convicted the respondents under Section 294 IPC against which the respondents filed appeal before the Sessions Court and learned Additional Sessions Judge acquitted them of the charges

under Section 294 IPC. Section 372 Cr.P.C reads as follows:

“No appeal to lie unless otherwise provided :No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

10. Section 397 of the Code empowers the High Court to call for records of the case to exercise its power of revision in order to satisfy itself as regards correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Section 397 in The Code Of Criminal Procedure, 1973 reads thus:

397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending

the examination of the record. Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

And Section 401 in The Code Of Criminal Procedure, 1973 reads thus,

401. High Court' s Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

11. The Apex Court in the matter of Roopendra singh Vs. State of Tripura and Another reported in (2017)13 SCC 612, has held thus :

10. section 372 Cr.P.C. has conferred upon a victim a substantive and independent right to maintain an appeal against acquittal. The widow of the deceased in the present matter comes within the definition of “victim” as incorporated in Section 2 (wa). Merely because leave to appeal was not granted to the State to prefer an appeal against acquittal, the appeal preferred by the victim informant ought not to have been rejected by the High Court summarily. We, therefore, set aside the order dated 28.06.2012 (Vacchalabai Mahadeo Artam Vs. State of Maharashtra, 2012 SCC Online Bom. 2124) passed by the High Court rejecting Criminal appeal preferred by the appellant and remit the matter to the High Court for fresh consideration. It will be open to the High Court to consider the matter for grant of leave to appeal to the appellant in the light of paras 17 and 18 of the decision of this Court in Satya Pal Singh Vs. State of MP (2015)

15 SCC 613:(2016) 3 SCC (Cri.) 307.

12. In a recent judgment of the Apex Court in the matter of **Mallikarjun Kodagali (dead) represented through Legal Representatives Vs. State of Karnataka and Others** reported in **(2019) 2 SCC 752**, it has been held thus:

74. Putting the Declaration to practice, it is quite obvious that the victim of an offence is entitled to a variety of rights. Access to mechanisms of justice and redress through formal procedures as provided for in national legislation, must include the right to file an appeal against an order of acquittal in a case such as the one that we are presently concerned with. Considered in this light, there is no doubt that the proviso to [Section 372](#) of the Cr.P.C. must be given life, to benefit the victim of an offence.

75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations, it is quite clear to us that a victim as defined in [Section 2\(wa\)](#) of the Cr.P.C. would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction. It must follow from this that the appeal filed by Kodagali before the High Court was maintainable and ought to have been considered on its own merits.

76. As far as the question of the grant of special leave is concerned, once again, we need not be overwhelmed by submissions made at the Bar. The language of the proviso to [Section 372](#) of the Cr.P.C. is quite clear, particularly when it is contrasted with the language of [Section 378\(4\)](#) of the Cr.P.C. The text of this provision is quite clear and it is confined to an

order of acquittal passed in a case instituted upon a complaint. The word 'complaint' has been defined in [Section 2\(d\)](#) of the Cr.P.C. and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary to consider the effect of a victim being the complainant as far as the proviso to [Section 372](#) of the Cr.P.C. is concerned.

13. In the light of above judgment, it is clear that the revision petitions filed by the complainant are not maintainable against the order of acquittal. The revision petitions are accordingly dismissed. However, complainant is vested liberty to file special leave to appeal along with an appeal against the judgment of acquittal passed by the appellate court, if he so desires.

Sd/-

(Rajani Dubey)
Judge