

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 5 of 2018**

- Basant Pandey S/o Shri Purnanand Pandey Aged About 53 Years, R/o Dindayal Colony Mangala, House No.- L.I.G. 162, Police Station Civil Line, Tahsil And District Bilaspur, Chhattisgarh.

---- Applicant**Versus**

1. Rakesh Kumar Verma S/o Late Shri Uma Kishor Verma, Aged About 61 Years R/o Jabdapara, Near Hanuman, Mandir, Sarkanda, Bilaspur, Police Station Sarkanda, District Bilaspur, Chhattisgarh. Office Address Assistant Grade III, Bhawan Shakha, Vikas Bhawan, Nagar Palik Nigam, Bilaspur, Chhattisgarh.
2. State Of Chhattisgarh, Through The District Magistrate, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Rishi Rahul Soni, Adv.
For Respondent No. 1	:	Mr. Shobhit Mishra, Adv.
For State/Respondent No.2	:	Ms. Reena Singh, PL.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****08.08.2019**

1. Heard on admission.
2. The applicant has filed this revision against order dated 13.09.2017 passed in Criminal Appeal No. 139/2016, whereby the learned 4th Additional Sessions Judge, Bilaspur, District Bilaspur, C.G. has allowed the appeal filed by the respondent No. 1 by setting aside the judgment of conviction and order of sentence dated 12.07.2016 passed by the learned Judicial Magistrate 1st Class Bilaspur, District-Bilaspur, C.G. in case No. 1188/2014 whereby respondent No. 1 has been acquitted of charge framed under Section 497 of IPC.
3. Applicant filed a complaint case before learned Judicial Magistrate First Class, Bilaspur, against respondent No. 1 under Section 497 of IPC which was registered as 1118/2014. The learned Judicial Magistrate First

Class on 12.07.2016, after completion of trial learned Judicial Magistrate convicted the Respondent No. 1 under Section 497 and sentence him RI for three years and to pay fine of Rs. 1000/- and learned appellate Court below allowed his appeal and acquitted him from the charge of 497 of IPC. Hence, the present revision.

4. Counsel for the applicant submits that the order passed by the learned Sessions Judge is illegal and against the provision of law. Learned appellate Court below has acquitted the respondent No. 1 especially with the evidence available on record which shows clearly that the respondent No. 1 had illicit relation with other lady.

5. Learned counsel for respondent No. 1 submits that this revision petition is not maintainable. Reliance placed on this Court order CRR. No. 619/2013 order dated 23.01.2014.

6. Heard learned counsel for the parties and perused the material on record including the impugned judgment.

7. This is revision against the judgment of acquittal passed by the appellate Court below in a complaint case i.e. not in police case on the ground that the trial Court has convicted and sentenced the respondent, but in exercise of appellate jurisdiction the appellate Court has acquitted him.

8. Sub-section (4) of Section 373 of the Code provides remedy of appeal after grant of leave to appeal to the complainant. Sub-section (4) of Section 378 of the Code reads thus:-

“4. If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

9. Sub-section (4) of Section 401 of the Code creates rider in entertaining the revision against appealable order. Sub-section (4) of Section 401 of the Code reads thus:-

“(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.”

10. In CRR No. 619/2013 order dated 23.01.2014, this Court has decided

that revision filed on behalf of the applicant against an order of acquittal passed by the appellate Court in complaint case is not maintainable in this case. Applicant also filed complaint case against respondent No. 1. Respondent No. 1 was convicted by the learned trial Judge and the appellate Court has acquitted the applicant.

11. In light of this Court's previous order the revision filed by the applicant against an order of acquittal passed by the appellate Court in a complaint case is not maintainable and same is dismissed as not maintainable. However, liberty is reserved to the applicant to file special leave to appeal along with an appeal against the judgment of acquittal passed by the appellate Court. Certified copy of the impugned judgment be returned to counsel for the applicant after furnishing duly Photostat copies of the same.

**Sd/-
(Rajani Dubey)
JUDGE**