

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.A. No. 62 of 2019

R. P. Sahu, S/o. Shri Narayan Prasad, Aged About 40 Years, R/o. Agrasen Chowk, Sakti, District Janjgir Champa, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh, Through : District Magistrate, District Baloda Bazar, Chhattisgarh.
2. Hemlal, S/o. Sadanand Patel, R/o. Village Belari, Tehsil and P. S. Kasdol, District Baloda Bazar, Chhattisgarh.

-----Respondents

For Appellant	: Mr. Anup Mazumdar, Advocate with Mr. Shrayankar Nandy, Advocate
For Respondent No.1/State	: Mr. H.S. Ahluwalia, Dy.A.G.
For Respondent No.2	: Mr. Awadh Tripathi, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/05/2019

1. This criminal appeal under Section 341 of the Code of Criminal Procedure has been filed against the order dated 24.10.2018, passed by learned Sessions Judge, District – Baloda – Bazar, in Criminal Appeal No.78/2017.
2. It is submitted by the learned counsel for the appellant that the appellant had conducted a raid in the house of Hemlal, S/o.

Sadanand Patel, R/o. Village – Belari and made a seizure of illegally possessed forest produce from the complainant. Later on a complaint made by the complainant Hemlal, the appellant was prosecuted for offence under Section 167, 420, 468, 471, 474 of the Indian Penal Code, in which the trial Court has convicted and sentenced the appellant. The appellant then filed an application under Section 340 of Cr.P.C. that complainant has taken benefits of forged receipt of the forest produce, regarding which material was present in the evidence. Therefore, it was prayed that the complainant be prosecuted. The trial Court rejected that application.

3. The appellant then preferred an appeal against the conviction and sentence bearing Criminal Appeal No.78/2017, before the Court of Second Additional Sessions Judge, Balodabazar, where the appeal was allowed and the appellant was acquitted of the charges against him. The appellant again preferred an application under Section 340 of the Criminal Procedure Code, before the Appellate Court praying for prosecution of the complainant, but the same has been rejected by the impugned order holding that the appellant had already exercised his entitlement to file an application under Section 340 of Cr.P.C. before the Court of Judicial Magistrate First Class, therefore, his application is not maintainable.

4. It is submitted that on perusal of the record of the trial Court and the appellate Court, there is sufficient material present for prosecution of the complainant, therefore, the Court below have erred in not taking any action on the application filed by the appellant, therefore, the appeal be allowed and the order for prosecution of the respondent No.2 be passed.
5. Counsel for the State/respondent No.1 opposes the grounds raised in appeal and the submissions made in this respect.
6. Counsel for the respondent No.2 submits that the trial Court has believed in the documents relied upon by the respondent No.2 and the Appellate Court has simply acquitted the appellant on the charges against him because of failure of proof. There is no such finding of the Court below that the respondent No.2 has placed reliance on the forged documents. Therefore, there was no ground to entertain the application under Section 340 of Cr.P.C. Similarly, this appeal under Section 341 of Cr.P.C. is also not maintainable.
7. The charges against the appellant before the trial Court is that he has manipulated search warrant by tampering with name and details of respondent No.2 and made use of the same for conducting raid in the premises of the respondent No.2. The trial Court held the charges proved and has convicted and sentenced the appellant. However, the Appellate Court after considering on the evidence on the same, has held that the charges against the

appellant were not found proved and he has been acquitted.

8. On perusal of the judgment in the case against the appellant of both the Courts below, it has appeared that complainant/ respondent No.2 had not taken support of any document to prove the entitlement of his possession of forest produce and neither the Court below appreciated on any such documents and given any finding in that respect. Therefore, the application filed by the appellant under Section 340 of Cr.P.C., before the Court below and this appeal are misconceived and without any substance.
9. Hence, after due consideration, I do not find any merit in this appeal and accordingly it is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge