

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 483 of 2003****Reserved on : 06.12.2019****Delivered on : 30.01.2020**

Mahetaroo, aged about 43 years, S/o Shri Gulabdas Panika, R/o Village- Dholmanu, R.S. Belgahna, Existing R/o Village- Nawapara, Baridih, P.S. Ratanpur, District- Bilaspur (C.G.) **---- Appellant**

Versus

State of Chhattisgarh, through: Anusuchit Jati Kalyan Police Station, Bilaspur (C.G.) **---- Respondent**

 For Appellant : Ms. Shipra Biswas, Advocate.
 For State/respondent : Mr. Raghvendra Verma, G.A.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

- This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 28.02.2003 passed by Special Judge [under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989] (for short "the Act, 1989"), Bilaspur (C.G.) in Special Case No. 144/2001, wherein the said court convicted the appellant in the following manner with further default stipulation:-

Conviction		Sentence
U/s 447 of IPC	:	S.I. for 1 month
U/s 3(1)(iv) of the Act, 1989	:	S.I. for 6 months & fine of Rs. 300/-
U/s 3(1)(v) of the Act, 1989	:	S.I. for 6 months & fine of Rs. 300/-

- In the present case, complainant is Dhansingh who is owner of the house which is constructed in land bearing Survey No. 1/k-k/37 area admeasuring 1.00 acre at Village- Baridih, Patwari Halka No. 7,

Revenue Circle- Ratanput, Tahsil- Kota which was rented to the appellant and when the complainant asked him to vacate the said premise, the appellant refused to vacate the said house and also possessed bed, table, chair, watch and other materials kept in the said house. The matter was reported, the appellant was charge-sheeted and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) Kanhaiyalal Netam (DW-1) deposed (Para 11) that the appellant was in possession of the land in question and lease granted to the complainant was cancelled, therefore, it is not a case where the complainant has been wrongfully dispossessed or the appellant has wrongfully occupied the said land.

(ii) The trial court has not evaluated the evidence in its true perspective, therefore, finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the records.

6. The question for consideration before this Court is whether the appellant wrongfully occupied the land in question which is owned by the complainant and whether the appellant dispossessed the complainant from the premise in question. Kanhaiyalal Netam (DW-1) deposed before the trial court that total 219 acres of land is allotted to

more than 200 person and the house which is occupied by the appellant, constructed in the land for which land is granted to him. He also deposed that the house was constructed by the appellant. He further deposed that the complainant was willing that his name be mutated in the said land, but he has no right over the land.

7. Though, Dhansingh deposed before the trial court that the house in question was rented to the appellant by him, but he is not saying that the appellant has wrongfully occupied the premise or wrongfully dispossessed. If the complainant Dhansingh himself has given possession of the premise in question to the appellant, the possession of the appellant is permissive in nature. Dhansingh is free to take legal action for getting vacant possession, but when the appellant is residing as tenant, his act is not a criminal act, therefore, the charge under Section 447 of IPC, 1860 & Section 3(1)(iv) & 3(1)(v) of the Act, 1989 are not established. The finding arrived at by the trial court is not sustainable.
8. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial court is set aside. The appellant is acquitted of the charge under Section 447 of IPC, 1860 & Sections 3(1)(iv) & 3(1)(v) of the Act, 1989. The appellant is reported to be on bail. His bail bond shall continue for a further period of six months from today in view of Section 437-A of Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge