

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 616 of 2020**

1. Vimlesh Jain S/o Lt. U.C. Jain, aged about 55 years, R/o MIG -C 482, Padnabhpur Bhilai, District Durg (C.G.)

**---- Applicant****Versus**

1. State of Chhattisgarh, through Principal Secretary Home, Mahanadi Bhavan, Atal Nagar, Raipur (C.G.).
2. Additional District Magistrate, Durg, District Durg (C.G.).

**---- Respondents**


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| For Applicant        | : | Shri Tarendra Kumar Jha, Advocate.   |
| For Respondent/State | : | Shri Vimlesh Bajpai, Govt. Advocate. |

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**Hon'ble Justice Shri Gautam Chourdiya****Judgment****01/09/2020**

- 1) This Criminal Revision is filed under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 against the amended memo No. 1377/जि.द.घि./2020, Durg dated 25/08/2020 (Annexure P-1) passed by Additional District Magistrate, Durg whereby on the request of Shri kailash Golchha, President of the Sang, the permission granted by the said Magistrate through memo dated 20/08/2020 for conducting election at Shree Jinkushal Dadabadi, Malviya Nagar, Durg has been stayed.
- 2) Learned counsel for the applicant submits that initially, the Additional District Magistrate, Durg issued a memo dated 20/08/2020 in favour of Trust of the applicant vide Annexure P-9 thereby granting permission for conducting election at Shree Jinkushal Dadabadi, Malviya Nagar, Durg on 27/08/2020. However, subsequently that memo was stayed by the Additional District Magistrate vide amended memo dated 25/08/2020 (Annexure P-1). He submits that before issuing the impugned

memo, the Additional District Magistrate did not afford any opportunity of hearing to the concerned persons and further the reason assigned in the impugned memo for staying the earlier memo dated 20/08/2020 is also not justifiable because the situation of Covid-19 cases in District Durg is under control.

- 3) On the other hand, learned counsel appearing for the State supports the impugned memo.
- 4) The instant revision has been listed on the question of its maintainability.
- 5) The present revision has been filed under Section 397 read with Section 401 of Code of Criminal Procedure, 1973. Section 397 of Code of Criminal Procedure, 1973 reads as under:-

“Section 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.*

*(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.”*

- 6) From perusal of the impugned amended memo (Annexure P-1), it is clear that the same has been passed by the Additional District Magistrate, Durg on administration side and not in the capacity of any inferior criminal Court. Furthermore, the impugned amended memo is in the nature of interlocutory order and not the final order. Being so, the instant revision is not maintainable.

- 7) As per the impugned amended memo (Annexure P-1), it is clear that no stay on the election has been imposed by the Additional District Magistrate, Durg. The Magistrate has only stayed the permission earlier granted through memo dated 20/08/2020 (Annexure P-9) for conducting election at Shree Jinkushal Dadabadi, Malviya Nagar, Durg looking to the rapid increase of Covid-19 cases in Durg as is reflected from the document of Annexure P-11.
- 8) For the reasons stated above, the present revision being not maintainable is disposed of with liberty to the applicant to move a fresh application through appropriate authority before the competent authority for grant of permission to conduct the election at the appropriate stage.

**-Sd/-  
(Gautam Chourdiya)  
Judge**

Chandrakant