

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 1473 of 2019

Priti Chandra D/o Shri Labho Chandra, aged about 28 years, R/o Village: Dadar Road, Nalapara, Dadarkhurd, Korba, Police Station and Tahsil and District : Korba, Chhattisgarh.

---- Applicant/Complainant

Versus

1. Abdul Sultan S/o Mohd. Sultan (Mohd. Suleman), aged about 41 years, R/o M.I.G-56, Pandit Ravishankar Shukla Nagar Korba, District: Korba, Chhattisgarh
2. Prasant Tiwari S/o Shri J.P. Tiwari, aged about 63 years, R/o Narmada Vihar Jamanipali, District: Korba Chhattisgarh, Present Address Teacher, Govt. Multipurpose Higher Secondary School Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Raju Prasad Koyal S/o Shri Seturam Koyal, aged about 29 years, R/o Village: Bisora, Police Station: Balouda, District : Janjgir-Champa, Chhattisgarh
4. Naresh Agrawal S/o Shri Maman Chand Agrawal, aged about 46 years, R/o Gewra Basti Kusmunda, District : Korba, Chhattisgarh
5. Sushil Thakur S/o Shri Ashok Thakur, aged about 40 years R/o M.I.G. 125, Pandit Ravishankar Shukla Nagar, Korba, District Korba Chhattisgarh, Present Address Arban Tadka, Farhad Chowk Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh
6. Abdul Rahman S/o Mohd. Suleman, aged about 44 years R/o M.I.G. 1/56, Pandit Ravishankar Shukla Nagar Korba, District : Korba, Chhattisgarh
7. Yogesh Suryavanshi S/o Shri Gajanand Suryavanshi, aged about 37 years R/o L.I.G. 86, Dr. R.P. Nagar Korba, District : Korba, Chhattisgarh
8. State of Chhattisgarh through The District Magistrate Korba, District : Korba, Chhattisgarh

For Applicant	: Mr. Pradeep Prasad, Advocate on behalf of Mr. Samir Singh, Advocate.
For Respondents No.1 to 7	: None.
For Respondent No.8/State	: Mr. Sunil Otwani, Additional Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal and
Hon'ble Shri Justice Arvind Singh Chandel
Order on Board

Arvind Singh Chandel, J.

11.11.2021

1. Heard on question of admission of the criminal revision.
2. Invoking jurisdiction under Section 397 read with Section 401 of the Cr.P.C., this revision has been preferred by the applicant/complainant questioning the judgment of acquittal recorded by the 2nd Additional Sessions Judge, Korba, District: Korba (C.G.) on 21.10.2019 in Criminal Appeal No.98/2018, by which the learned Additional Sessions Judge affirmed the order dated 31.10.2018 of learned Judicial Magistrate 1st Class, Korba, District: Korba, Chhattisgarh in Criminal Case No. 1014/2015, by which the respondents No. 1 to 7 were acquitted of the offences under Sections 458, 294, 506 Part-II, 323/34, 427 and 147 of the Indian Penal Code.
3. According to the case of prosecution, on 18.06.2010 at about 09:00 p.m. allegedly, respondents No.1 to 7 entered into the house of complainant Priti Chandra. It is alleged that they demolished the boundary wall of her house and when father of Priti Chandra dissuaded them from demolishing boundary wall, the respondents gave them threats of killing. Further, the complainant was slapped and at the same time other family members were also assaulted by the respondents. It is further alleged that the house hold articles such as

T.V., Cooler, Fan, Bed and other things were also demolished by the respondents. The matter was reported by the complainant, on the basis of said report, offences were registered against the respondents No.1 to 7. After investigation, charge-sheet was filed by learned Judicial Magistrate First Class, Korba. After trial, the respondents No.1 to 7 were acquitted of the charges vide order dated 31.10.2018 against which an appeal was preferred before learned 2nd Additional Sessions Judge, Korba (C.G.). Vide judgment dated 21.10.2019, learned 2nd Additional Sessions Judge, Korba affirmed the judgment of the trial Court. Hence this appeal.

4. Learned counsel for the applicant would submit that both the Courts below are absolutely unjustified in acquitting respondents No.1 to 7 extending the benefit of doubt whereas the complainant has clearly proved her case beyond reasonable doubt. He would further submit that both the Courts below by recording totally a perverse finding overlooking the material available on record to convict the aforesaid accused persons and the judgment of acquittal is based on totally irrelevant consideration omitting the admissible evidence available on record and therefore, the judgment of acquittal deserves to be set-aside and the matter be remitted to the trial Court for re-trial/fresh consideration.
5. On the other hand, Mr. Sunil Otwani, learned counsel for respondent No.8/State opposes the instant revision. He would submit that the scope of revision against the judgment of acquittal is extremely limited and would not go beyond the permissible ground as mentioned by the Supreme Court in the matter of **Sheetala Prasad and others vs. Sri Kant and another**¹ and as such, learned Additional Sessions Judge has rightly held that it is the case where no offence has been committed by present respondents No.1 to 7 and even otherwise, benefit of doubt has rightly been extended to them in view of the fact that they have falsely been implicated in crime in question by the applicant. He would also rely upon the judgment of the Supreme Court in the matter of **Logendranath Jha and others v. Shri Polai Lal Biswas**² (para-7).

6. We have heard learned counsel appearing for the parties, considered

¹ (2010) 2 SCC 190

² AIR 1951 SC 316

their rival submissions made hereinabove and also gone through the records with utmost circumspection.

7. In order to judge the correctness of the judgment of acquittal recorded by the trial Court, it would be appropriate to notice the categories exhaustive on which the revisional jurisdiction can be exercised by this Court at the instance of a private complainant, which has been authoritatively laid down by their Lordships of the Supreme Court in **Sheetala Prasad** (supra) in which, in para-12 their Lordships have laid down the categories on which this Court can exercise the revisional jurisdiction filed at the instance of a private complainant.
8. In the matter of **Sheetala Prasad** (supra), it has been held that this Court can exercise the revisional jurisdiction (i) where the trial Court has wrongly shut out evidence which the prosecution wished to produce, (ii) where the admissible evidence is wrongly brushed aside as inadmissible, (iii) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (iv) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and (v) where the acquittal is based on the compounding of the offence which is invalid under the law. Their Lordships observed as under:-

“12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant

(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and

(5) where the acquittal is based on the compounding of the offence which is invalid under the law

15. The High Court has further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants. In the face of prohibition contained in Section 401(3) of the Code of Criminal Procedure, it was all the more incumbent upon the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method. Further, the matter is remitted to the learned Additional Sessions Judge for the purpose of passing fresh order of conviction and imposition of sentence on the appellants in the light of what is observed in the impugned judgment.”

9. In **Logendranath Jha** (supra), the Supreme Court has held that the High Court while dealing with a revision petition by a private party against an order of acquittal cannot interfere to it in absence of error on point of law.

10. Reverting to the facts of the present case in light of aforesaid judgment delineating the scope of interference in the judgment of acquittal recorded by both the Courts below, it would appear that both the Court below have concurrently held that the prosecution failed to prove aforesaid offences beyond reasonable doubt and clearly held that the ingredients of offences under Sections 458, 294, 506 Part-II, 323/34, 427 and 147 are not established and there is no legal evidence available on record to record the guilt of respondents No.1 to 7 for the aforesaid offences. The said findings of the Courts below are based on the facts and evidence available on record.

11.We are of the considered opinion that we do not find any reason to interrupt herein in the said findings of acquittal passed by learned Judicial Magistrate First Class, Korba and affirmed by learned 2nd Additional Sessions Judge, Kobra and there is no error of law in the order of acquittal. We do not find any merit in this criminal revision.

12.Accordingly, the criminal revision deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

Sd/-

(Arvind Singh Chandel)
Judge