

(2020) 01 JH CK 0129
In the Jharkhand High Court
Case No : Criminal Revision No. 997 Of 2013

Binay Nayak @ Bhimsen Nayak

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 392, 411

Citation : (2020) 01 JH CK 0129

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Sunita Kumari, Rakesh Kumar

Final Decision : Disposed Of

Judgement

The instant application is directed against the judgment dated 21.08.2010, passed by the learned Sessions Judge, West Singhbhum at Chaibasa in

Criminal Appeal No.26 of 2009, whereby the appeal preferred by the petitioner has been partly allowed.

The learned trial court vide its judgment dated 18.05.2009, passed in G.R. No.84/2006 (T.R. No.265/2009), convicted the petitioner for the offence

under Sections 392 and 411 /34 of the Indian Penal Code.

The learned appellate court acquitted the petitioner from the charge under Section 411/34 IPC, however, sustained the conviction of the petitioner

under Section 392 IPC whereby the petitioner was sentenced to undergo RI for 3 years with fine of Rs.500/-.

The learned Amicus submits that there are material contradictions in the prosecution witnesses. The learned appellate court has committed an error in

not acquitting the petitioner for the offence under Section 392 IPC though the petitioner has been acquitted for the offence under Section 411/34 IPC.

She further submits that there is no criminal antecedent of the petitioner and this is a single case in which he has been convicted. She further submits

that only Rs.380/-have been recovered from him. Though there were several prosecution witnesses, only one independent witness has been examined

and he did not support the prosecution. She further submits that the petitioner is young man aged about 30 years and sending him back to prison will

ruin his entire career, as such, some leniency may be granted by this Court. She further submits that petitioner has remained in custody for about 15

months. In view of these facts the petitioner is entitled for acquittal.

Per contra, the learned APP though supports the impugned order but could not dispute the fact that the petitioner is not habitual offender and remained

in custody for about 15 months.

Heard learned counsel for the petitioner and the learned APP for the State.

After going through the impugned orders including lower court records and keeping in mind the limited submissions of the learned counsel for the

petitioner and also the scope of the revision jurisdiction, I am not inclined to interfere with the finding of the courts below and as such the judgment of

conviction passed by the learned trial court and upheld by the learned appellate court is, hereby, confirmed.

However, so far as sentence is concerned, it is apparent from record that the incident is of the year 2006 and 13 years have elapsed and the petitioner

must have suffered the rigors of litigation for the last 13 years and also remained in custody for 468 days. It is not stated that the petitioner has ever

misused the privilege of bail. Further, the incident does not reflect any cruelty on the part of the petitioner or any mental depravity.

In a situation of this nature, I am of the opinion that no fruitful purpose would be served by sending the accused person back to prison rather interest

of justice would be sufficed if the sentence is modified in lieu of fine.

Thus, the sentence passed by the Court below is, hereby, modified to the extent that the petitioner is sentenced to undergo for the period already

undergone, subject to the payment of fine of Rs.10,000/-.

It is made clear that the petitioner shall pay the aforesaid fine of Rs.10,000/- within a period of 3 months from today before the Secretary, DLSA,

Chaibasa.

With the aforesaid observations, directions and modification in sentence only, this revision application is disposed of.

The petitioner shall be discharged from the liability of his bail bonds, subject to fulfillment of aforesaid condition.

The Secretary, Jharkhand High Court Legal Services Committee shall reimburse the learned Amicus on submission of bill(s) for this case.

She shall be paid as provided under the Notification dated 23.11.2017.

Let the lower court record be sent back to the court concerned forthwith.

Let the copy of this order be communicated to the court below and the Secretary, DLSA, Chaibasa.