

(4)

COURT FEES EXEMPTED
BY NOTIFICATION NO. 24330-0270201-
B.D.C. AS AD. ESTABLISHED IN SCHEDULE
I & II OF THE COURT FEES ACT 1973

(6)

THE HIGH COURT OF JUDICATURE AT BILASPUR

ACQUITTAL APPEAL NO. /2014

CRMP 103/2014

APPELLANT :

The State of Chhattisgarh
Through -District Magistrate
Raipur (C.G.)

VERSUS

RESPONDENT :

Devnath Sahu,
S/o.- Mahetaru Sahu,
Aged about - 55 years
R/o.- Tilda Ward No. - 9
P.S. - Newara, District - Raipur (C.G.)

Crime No. - 187/2012
Police Station - Vidhan Sabha
District - Raipur

**MEMORANDUM OF APPEAL UNDER SECTION 378(1) OF THE
CODE OF CRIMINAL PROCEDURE'1973.**

This appeal is directed against the findings and judgment of acquittal dated 28/11/2013 passed by the Court of Smt. Pallavi Tiwari, Judicial Magistrate, First Class at Raipur in Criminal Case No. 654/2012 whereby and whereunder the respondent has been acquitted from the charges punishable U/s. 279 & 338 of I.P.C. Hence, this appeal inter-alia on the following facts and grounds:-

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Justice P. Sam Koshy

Cr. M.P. No. 103 of 2014

Appellant

State of Chhattisgarh

VERSUS

Respondent

Devnath Sahu

APPLICATION FOR GRANT TO LEAVE TO APPEAL UNDER SECTION 378(3) OF THE CODE OF CRIMINAL PROCEDURE

Present:- Shri Arun Singh, G.A. for the appellant.
None for the respondent.

Oral Order

(04. 02. 2014)

By way of the instant Cr. M. P. the appellant intends to challenge the judgment of acquittal dated 28.11.03 passed by the Court of Judicial Magistrate, First Class at Raipur in criminal case No. 654/2012.

2. The case of prosecution was that on 16.08.2012 when the complainant Tumman Sahu (PW-1) was driving on his motorcycle C.D. Deluxe bearing registration No. C.G. 04 DE 8253 and when he reached near Vidhan Sabha Chowk, truck which was driven by respondent rashly and negligently causing an accident with complainant. As a result of which the complainant has received injuries in his jaw as well as knee, Thereafter a FIR was lodged by Tumman Sahu (PW -1) for offence punishable u/s. 279 and 338 of IPC and a criminal case was initiated against the respondent.

3. The court below after recording the evidence by its judgment dated 28/11/2013 has passed an order and acquitted the respondent from the charges u/s 279 and 338 of IPC.

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4. While passing of the judgment of acquittal the court below has considered the evidence of PW-1 Tumman Sahu as well as PW-3 Jitendra Kumar Kamal who was said to be traveling alongwith Tumman Sahu PW-1 on 16.08.2012 when the accident took place. The PW-1 Tumman Sahu and PW-3 Jitendra Kumar Kamal have stated before the court below in their cross examination that they have come to know the name of accused person as well as the number of the vehicle which the accused was driving from the police authorities and they had not seen the number of vehicle driven by the respondent at the time of accident. Similarly, PW-2 Ashok Sahu has also submitted in his cross examination that he was not present at the place of accident when the accident took place and, therefore, he would not be in a position to say as to by whose fault the accident took place. Ashok Sahu PW-2 further said that he received information about the accident only from Tumman Sahu PW-1, . Based on these facts and circumstances and the evidence that has come on record the court below has passed the order of acquittal to the respondent by its judgement dated 28.11.2013

5. It is this judgement dated 28.11.2013 which the State Government intends to challenge by way of the instant Cr. M.P.

6. On due consideration of the evidence that have come on record it is evidently clear that the findings arrived at by the trial court are on the basis of the evidence that have come on record. The judgement of the court below can not be said to be erroneous. The trial court has also not committed any error of law in appreciating the evidence that have come on record. The findings based upon which the judgment has been passed



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is purely on the basis of the evidence.

7. For the foregoing reasons, I do not find it to be a fit case where the leave should be granted to the State for appeal against the said order. Accordingly, the said application for grant of leave is rejected.

8. In view of the above, the instant Cr. M.P. is rejected.

Sd/-
P. Sam Koshy
Judge

santosh