

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.800 of 2015**

Vishnu Prasad Dubey, S/o. Chhote Lal Dubey, aged about 40 years, R/o. Khodari, PS Gourela, District Bilaspur (CG)

---- Applicant

Versus

Vinod Kumar Chakradhari, S/o. Ashram Chakradhari, aged about 28 years, R/o. Ranijhap, PS Gourela, Tahsil Pendraroad, District Bilaspur, (CG).

---- Non-applicant

Ms. Nirupama Bajpai, counsel for the appellant.

Judgment On Board**09/9/2015**

The applicant/appellant filed the instant Cr.M.P. followed by acquittal appeal against judgment dated 18.02.2015 passed by Judicial Magistrate First Class, Pendraroad in Criminal Case No.62/13, whereby and whereunder the learned trial Court acquitted the respondent/accused of the offence under Section 379 of the IPC in a criminal complaint case filed on behalf of the applicant.

2. The applicant/appellant prayed for leave to appeal against the judgment passed by the trial Court.

3. Heard on Cr.M.P. for leave to appeal.

4. On behalf of the applicant, it is submitted that since the trial Court erred in not appreciating the evidence adduced on behalf of the complainant, judgment passed by the trial Court suffers from impropriety, illegality and incorrectness, findings are based on conjunctures and surmises, without cogent proof against the material on record, hence, leave to appeal may be granted and the appeal may be admitted for hearing and disposed of as per law.

5. Learned counsel for the applicant duly supported the ground taken in the instant Cr.M.P. for leave to appeal and submitted that accused/respondent mortgaged his motor cycle CG10EF 0504 to the complainant on 06.4.2012 for Rs.20,000/-, thereafter on 04.5.2012, the accused/respondent has stolen the said motor cycle for which the applicant filed an application before the Gourela Police. The Police failed to initiate any proceedings. Thereafter an application was filed by the complainant before the criminal Court against the accused/respondent for the offence Section 379 of the IPC. Though there was evidence regarding identification of the motor cycle stolen from the possession of the applicant by the respondent/accused, the Court below acquitted the accused. Hence, learned counsel submits that there are sufficient material prima facie to show the guilt of the accused, hence, leave to appeal may be granted and appeal may be heard on its merits.

6. For the purpose of leave to appeal, impugned judgment and other evidence, documents adduced along with instant case are perused.

7. From perusal of Annexure-A/2, it appears that the accused/respondent mortgaged motor cycle CG10EF 5040 for Rs.20,000/- to the applicant on 06.4.2012. As per Annexure-A/3, the applicant on 05.5.2012 gave a complaint before the Gourela Police regarding alleged theft of said motor cycle. The evidence adduced by the complaint before the trial Court before registration of the criminal case and evidence after framing of the charges are also perused. As per judgment dated 18.02.2015, the complainant is not the eyewitness for the alleged theft. Evidence of Bhavesh Kumar Kesharwanit (PW-2) is based on hear say evidence, hence, no any appreciation can be based.

The learned trial Court also held that the statement of the Vishnu Singh Rathore (PW-3) also cannot be considered to prove the offence as in para 5 of the cross examination, he admitted that he cannot state the number of the motor cycle. He simply deposed the colour of the motorcycle as black and further admitted that there are many motor cycles black in colour. He further admitted that the when the complainant locked his motor cycle and went to market that time he was not present. The learned trial Court after due appreciation acquitted the accused for the charges framed against him.

8. After perusal of the entire material available in the matter, in the considered view of this Court, the applicant failed to prove prima facie case against the respondent for leave to appeal. The judgment of the trial Court is based on entire evidence, which does not require any interference.

9. Consequently, there is no material for leave to appeal. Hence, the instant Cr.M.P. for grant of leave to appeal is dismissed. Also acquittal appeal filed along with Cr.M.P. is dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE