

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1128 of 2014**

- State of Chhattisgarh through the Station House Officer, Police Station Chakradharnagar District Raigarh C.G.

---- Appellant**Versus**

- Sukhram Chouhan S/o Samaru Chouhan Aged About 37 Years R/o Village Kotmar, P.S. Chakradhar Nagar, Raigarh District Raigarh C.G.

---- Respondent

For appellant/State : Ms. Shobha Kashyap, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****06/05/2015**

1. Heard on I.A. No. 1/14 for condonation of delay in filing the acquittal appeal as the present Cr.M.P. is preferred after 154 days of limitation.
2. Learned counsel for the applicant submits that due to official procedure and formalities regarding permission to file appeal the instant Cr.M.P. followed by acquittal appeal is preferred after 154 days of its limitation. Delay may be condoned and the Cr. M. P. may be allowed and leave to appeal be granted.
3. So far as hearing on motion of this petition for leave to appeal is concerned, learned counsel for the applicant submits that complainant P.W. 3 Bhramar Chouhan informed the police that he was assaulted by respondent by stick and also by teeth biting. He also named eye-witnesses. Police after registering Rojnamcha Sanha on 27-8-2009 started investigation. Victim was medically examined. P.W. 8 Dr. Jayant Shrivastava noticed swelling in the small finger of left hand, injury of teeth biting below chest, swelling on left side of forehead, one abrasion on right forearm, one abrasion on right hand. The doctor opined that all the injuries were simple in nature. P.W. 3 Bhramar Chauhan duly supported his case, even then the trial Court acquitted the non-applicant on the ground that the prosecution failed to

prove its case beyond all probable doubt. She further submitted that it is a good case to argue. Hence the leave to appeal may be granted.

4. In order to appreciate the arguments advance on behalf of learned Dy. Govt. Advocate appearing for the State regarding leave to appeal, the document annexed with the Cr.M.P. are perused.
5. On entire perusal of the evidence and facts of the case, it is emerged that the incident is of 26-8-2009 at about 8.30 in the night and the matter was reported to police on 27-8-2009 at 1.30 PM. Delay is not explained by the victim. There is material omission and contradiction in the statement of victim. He stated that at the time of incident, the non-applicant was having sword but the same is not stated at the time of lodging of the FIR. Victim admitted that two criminal cases for sale of illicit liquor and theft are pending against him and the accused gave evidence against him in the case of sale of illicit liquor. Two eye-witnesses P.W. 1 Mahettar and P.W. 6 Naresh Chauhan have not supported the prosecution case and turned hostile. Ither witnesses for Nuksani panchnama P.W. 2 Phulsingh Rathiya and P.W. 4 Rohit Nisad have also not supported the case regarding memorandum of mischief for damage of about Rs. 200/-. The defence witness D.W. 3 Bholaram stated a different story. Though the doctor noticed abrasion, swelling and mark of teeth biting but looking to the entire facts and circumstances of the case, the trial Court has not accepted the statement of the complainant P.W. 3 as of sterling nature. Consequently the trial Court awarded benefit of doubt to the non-applicant.
6. Upon perusal of the entire evidence, I am not agree with the arguments advanced on behalf of the applicant for grant of leave to appeal. In the considered view of this Court, the judgment of acquittal to the non-applicant as the offence is not proved against all probable doubt, does not require any interference. Hence the permission of leave to file appeal cannot be granted. Also the Cr.M.P. is preferred after 154 days of its limitation. The

same is also not explained.

7. In the above circumstances, I am not inclined to condone the delay in filing the petition for leave to file appeal.
8. Consequently, Cr.M.P. followed by the acquittal appeal is hereby dismissed at motion stage.

Sd

Chandra Bhushan Bajpai
Judge