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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 180 of 2014**

State Of Chhattisgarh Through: P.S. G.R.P., Raigarh, Distt.
Raigarh (C.G.)

---- Petitioner

Versus

1. Pushpendra S/o kaptan Singh Bhadoriya Aged About 24 Years R/o. Sonarpura, P.S. Gormi, Tah. Mehgaon, Distt. Bhind (M.P.)
2. Rammohan S/o . Kamlesh Shrivastava Aged About 22 Years R/o.Nayagaon, Sagra, P.S. Nayagaon, Distt. Bhind (M.P.)
3. Pushpendra Singh S/o . Durgesh Singh Kushwaha Aged About 22 Years R/o. Vill. Mukundpura, P.S Basoni, Distt. Agra (U.P.)

-----Respondents

For Applicant/State : Shri Ashish Shukla, Govt. Advocate

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER****12/07/2016**

1. Delay in filing the instant Cr.M.P. followed by Acquittal Appeal for 463 days has been condoned by the order of this Court on 12.5.2014.
2. Heard on the instant Cr. M.P. under Section 378 (3) Cr.P.C. for leave to appeal against the judgment of acquittal passed by the trial Court in Sessions Case No. 68/2012 vide judgment dated 6.8.2012.
3. Heard learned counsel for the applicant.
4. The Court below has acquitted all the 3 respondents for the offence under Sections 342, 354 & 376 (D) read with Sections 511, 509, 506 B of the I.P.C.

5. Perused the evidence of PW-2, prosecutrix (name not mentioned). There is no eye-witness to the incident. The respondents were charge-sheeted solely on the complaint and the evidence of the prosecutrix and other connecting circumstantial evidence. The prosecutrix has turned hostile and has not identified any of the respondents in the Court. As mentioned in the deposition sheet, she is well educated member of the society and concerned with legal profession. As the prosecutrix had not supported the case of the prosecution, the trial Court held that it was the case of no evidence and acquitted all the respondents.

6. Learned counsel for the applicant in addition to the grounds taken in the Cr.M.P. further added that the concerned Sub-Inspector who had written the FIR and recorded the statement of the prosecutrix, were not examined as they failed to appear despite acceptance of summons thrice.

7. There is no evidence prima facie available on record as to enable the applicant grant leave to appeal and the statements of both Sub-Inspectors were not recorded by the trial Court, I am of the view that as the prosecutrix has turned hostile and she has not said anything against any of the respondent, the person who lodged the FIR at the instance of the prosecutrix or recorded the statement before the Court, cannot lead entire evidence so as to convict the respondents for the offences. Even otherwise, the prosecution never prayed before the trial Court for issuance of warrant or to ensure the appearance of those prosecution witnesses. Even otherwise, as per Section 231 Cr.P.C., it is the duty of the prosecution to produce all such evidence as it thinks fit to prove the case.

8. On the request of the prosecution, the trial Court issues summons or warrant as the case may be to ensure the presence of the witnesses before the Court at the time of recording evidence.

9. On perusal of the entire evidence adduced by the prosecution, there is no substance in the petition for grant of leave to appeal.

10. Consequently, the instant Cr.M.P. is dismissed along with the proposed Acquittal Appeal annexed with the said Cr.M.P. The application for grant of leave to appeal is hereby dismissed.

11. The Cr.M.P. stands disposed of. **Sd/**

(Chandra Bhushan Bajpai)
JUDGE