

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 169 of 2016**

State of Chhattisgarh through the Police station Ambikapur, Distt. Surguja (CG).

---- Applicant**Versus**

1. Chandra Prakash Nayak, S/o late Dharmpal Nayak, aged 21 years.
2. Shanta Devi Kedar, W/o Keshav Das, Aged about 47 years,
Both R/o Namnakala, PS Gandhi Nagar, Distt. Surguja (CG).

---- Respondents

For applicant
For respondents

Shri Anupam Dubey, Deputy Govt. Advocate.
Shri Manoj Kumar Jaiswal, Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****18/07/2016**

1. The present petition has been preferred seeking for leave to appeal against the judgment dated 24.08.2015 passed by the Judicial Magistrate First Class, Ambikapur in Criminal Case No.340/2014. Vide the said judgment, the court below has acquitted the respondents for the offences under Sections 279 and 338 IPC and also under Sections 128/170,130/177 and 146/196 of the Motor Vehicles Act, 1988.
2. The facts in brief are that, on 12.02.2014 at around 15:30 pm, the motorcycle bearing registration No.CG-10-CD-4352 allegedly being driven by the respondent No.1 dashed one Amol Kumar Sinha while he was riding a bicycle resulting into injuries on his solder.

Subsequently a complaint was lodged by the police authorities stating that injured Amol Kumar Sinha was hit by the offending motorcycle being driven by the respondent No.1 rashly and negligently. Based on the said complaint and statements recorded during the course of investigation, a case was registered against the respondents for the offences as mentioned in paragraph-1 of this order.

3. The court below after conclusion of trial vide judgment impugned dated 24.08.2015 held that the prosecution has not been able to establish its case beyond reasonable doubts so as to hold the respondents No.1&2 guilty of the offence registered against them and had acquitted them of the charges levelled against them. It is this order dated 24.08.2015 which is under challenge in this petition seeking for leave to appeal.
4. Learned counsel appearing for the applicant submits that the court below has passed the order of acquittal in a mechanical manner without properly appreciating the seizure witnesses. It is also pointed out that deposition of other witnesses have also been not considered properly by the court below while granting acquittal to the respondents. PW-3, Monita Sinha, is one of the eyewitness whose deposition has not been duly appreciated by the court below. Further, deposition of PW-1, injured Amon Sinha, also has not been duly considered by the court below while granting acquittal to the respondents.
5. Having considered the submissions put fourth by the counsel for the applicant/State and on perusal of record what is an admitted position

is the fact that there is no proper and cogent evidence led by the prosecution whereby it could be said that it was the respondent No.1 alone who was riding the motorcycle which dashed the injured Amol Sinha on 12.02.2014. Further, from the evidence which have come on record, it is also not clear as to whether the respondent No.1 or for that matter the respondent No.2 was riding the motorcycle. Record also shows that there is no statement of the persons or even a complaint lodged by these persons on the date of accident. Rather, it is a case where complaint and statement of complainant as well as other witnesses were all recorded after two days giving rise to a great element of doubt on the prosecution story. Further, from the record it also reflects that seizure of motorcycle also was made after almost one month's time i.e. on 08.03.2014 whereas the accident was occurred on 12.02.2014 which also creates suspicion on the prosecution story.

6. A bare perusal of depositions of PW-1, PW-2 and PW-3 also clearly reflect that there is no direct evidence made by these prosecution witnesses by which it could be said that it was the respondents alone who was riding the motorcycle and there is no further specific statement by the prosecution witness showing as to which of the two accused persons/respondents was in-fact riding the motorcycle at the time of incident. For all these shortcomings, the court below having granted benefit of doubts to the accused persons and having acquitted them, it cannot be said to be illegal or an infirmity on the part of the court below.

7. The State counsel, in addition, also could not make out any strong grounds by which it can be said that the respondent No.1 alone or for the matter the respondent No.2 was the persons who had been driving the motorcycle and had dashed the injured Amol Sinha on 12.02.2014.
8. Thus, in the absence of any cogent and sufficient evidence, this court is of the opinion that no strong case is made out by the applicant calling for interference with the impugned judgment dated 24.08.2015. Accordingly, the criminal miscellaneous petition followed by acquittal appeal being devoid of merit is liable to be and is hereby dismissed.

Sd/-
(P.Sam Koshy)
JUDGE

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