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HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 138 of 2016

1. State of Chhattisgarh Through Station House Officer, Police Station Baagnadi, District Rajnandgaon Chhattisgarh.

---- Applicant/Petitioner

Versus

1. Balvindar Singh S/o Inder Singh Sikh, Aged about 35 years, R/o Binda Nagar, Camp 01, Ward No. 19, Bhilai, Police Station Chhawani, District Durg Chhattisgarh.

---- Non-applicant/Respondent

For Applicant – Shri Ashish Shukla, Govt. Advocate.
For Respondent – Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12/07/2016

1. Heard on I.A.No.1/2016 for condonation of delay in filing the instant Cr.M.P. followed by Acquittal Appeal as the instant Cr.M.P. along with the Acquittal Appeal has been filed after 80 days of its limitation.
2. On behalf of respondent, I.A.No.1/2016 is formally opposed.
3. On due consideration, for the reasons mentioned in I.A.No.1/2016 for delay in filing the instant Cr.M.P. followed by Acquittal Appeal, the application (I.A.No.1/2016) is hereby allowed and the delay of 80 days is condoned.
4. Also heard learned counsel for the applicant for leave to appeal as the instant Cr.M.P. arise out of judgment of acquittal passed by the Sessions Judge Rajnandgaon, C.G. in Criminal Appeal No.01/2015 whereby and whereunder the respondent was acquitted for offence under Section 10 of C.G. Agricultural Cattle Preservation Act, 2004, Section 11(D) of Prevention of Cruelty to Animals Act,

1960 and Section 66/192(A), Motor Vehicle Act, 1988. The appellate Court holding that there was no any admissible evidence, reversed the findings of conviction and sentence passed by the Chief Judicial Magistrate, Rajnandgaon in Criminal Case No.48/2011 vide judgment dated 08-12-2014 and acquitted the respondent from the charges.

5. Learned counsel for the applicant would submit that though at the time of seizure of vehicle and the cattle vide Ex.-P/1 the respondent was not present, he absconded from the spot, he was arrested thereafter and as ASI, the Investigating Officer – Roshan Dubey (PW-6) deposed before the trial Court that on enquiry the respondent had confessed the guilt and admitted that he was taking those cattles to Nagpur slaughter house, hence, the involvement of the respondent was duly proved. The appellate Court committed error while acquitting the respondent. Hence, to appreciate the matter leave to appeal may be granted and the Court may further proceed to hear the acquittal appeal.

6. Perused the impugned judgment passed by the trial Court and the judgment of the appellate Court. Also perused copy of the evidence adduced by the prosecution during the trial.

7. Upon perusal of statement of seizure witness Anil Naidu (PW-1) and Prakash (PW-2) who had turned hostile, it is apparent that they had not identified the respondent as driver of the said vehicle. Admittedly, the accused/respondent was not caught hold at the time of the incident, he was arrested later on. Admission of guilt before the ASI during investigation cannot be treated as admissible evidence against the respondent in light of Section 25 of the Evidence Act. With this, any confession before police officer regarding the guilt is of no help to the applicant in the matter as that is not an admissible evidence. From perusal of the entire material, it appears that during the investigation, the respondent was registered owner of the said vehicle but he had not served with a notice under

Section 133 of the Motor Vehicles Act, 1988 as to give information as to who was driving the vehicle at the relevant point of time. In absence of any such notice and its reply as required under Section 133 of the Motor Vehicles Act, 1988, there is no any admissible evidence so as to connect him with the crime. For the sake of argument though not admitted, applying before a criminal court for taking the vehicle on Supurdnama, this fact alone may not constitute any information as required under Section 133 of the Motor Vehicles Act, 1988.

8. On due consideration, the appellate Court after appreciating the entire admissible evidence acquitted the respondent from the offence. Upon considering the entire evidence adduced before the trial Court, I do not see that this is a proper matter where leave to appeal be granted. Consequently the petition for leave to appeal is hereby dismissed along with proposed acquittal appeal.

9. Cr.M.P. dismissed.

Sd/-

(Chandra Bhushan Bajpai)
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