

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

CRMP No. 140 of 2016

State Of Chhattisgarh Through The Station House Officer,
Police Station Ambikapur, District Surguja Chhattisgarh.

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Versus

1. Rustam Singh S/O Jagjit Singh Aged About 24 Years
2. Happy Singh S/O Gurumukh Singh Aged About 24 Years
3. Ankit Gupta S/O Sanjay Gupta Aged About 25 Years
4. Tinku @ Jitendra Singh S/O Rahul Singh Aged About 27 Years

All R/O Bhatti Road, Police Station Ambikapur, District Surguja
Chhattisgarh.

---- Respondents

13-7-2016	Mr. Ashish Shukla, Govt. Adv. for the petitioner. Mr. Parag Kotecha, Adv. for the respondents. Heard on I.A. No. 1/16 application under Section 5 of the Limitation Act for condonation of delay in filing the instant CRMP followed by acquittal appeal as the same is preferred after 46 days of limitation. Learned counsel for the respondents opposes the application. On due consideration of the reasons mentioned in I.A. No. 1/16 and the attending facts, in the opinion of this court, the delay is bonafide. Hence it is condoned.	

	I.A No. 1/16 is allowed. Also heard on instant CRMP under Section 378(3) of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') for grant of leave to appeal against the judgment dated 24-8-2015 passed by the Judicial Magistrate First Class, Ambikapur in Criminal Case No. 146/2009 whereby the court below has acquitted the respondents for the charges under Section 325/34 and 323/34 of the IPC after affording benefit of doubt. Learned counsel for the respondents raises a legal objection that the applicant may prefer an appeal against the judgment of acquittal before the Court of Sessions as provided in sub-Section (1)(a) of Section 378, Cr.P.C. Heard learned counsel for the parties on this issue as to in which forum the appeal would lie. Also heard learned counsel for the applicant on leave to appeal. Sub-sections (1)(a), (1)(b) and sub-Section (3) of Section 378 of the Cr.P.C. are relevant and quoted below:- 378. Appeal in cases of acquittal (1) Save as otherwise provided in Sub-Section (2) and subject to the provisions of Sub-Sections (3) and (5), (a). the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence; (b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of	
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	an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision. 3. No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.” The respondents have faced charges under Sections 323/34 and 325/34 of the IPC, which are bailable offences as shown in 1st schedule of the IPC. Therefore, offence for which the respondents were tried is cognizable and bailable. The forum to file acquittal appeal before the Court of Sessions lies only where the matter is cognizable and non-bailable offence. In the present case, the trial of the said matter was for cognizable and bailable offence. Therefore, the provisions of Sub-section (1)(a), Cr.P.C. are not attracted. The present matter falls under the ambit of sub-section (1)(b) of Section 378 of the Cr.P.C. and the applicant/State is entitled to file an acquittal appeal along with leave to appeal from the judgment of acquittal passed by any court i.e. Judicial Magistrate First Class, Ambikapur before this Court and therefore sub-section (3) of Section 378 is also attracted and applicable. Thus it is observed that in the present matter, appeal would not lie before the Court of Session, on the other hand, the appeal would lie to the High Court. Question of law submitted on behalf of the respondents is answered and decided accordingly. So far as grant of leave to file appeal is	
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	concerned, after perusal of statement of the eye-witnesses, complainant and injured, without commenting anything on the merit of the case, leave to appeal is granted. Instant Cr.M.P. is allowed. Registry is directed to register the matter under the head of acquittal appeal. Acquittal appeal is admitted for hearing. Call for the record of the trial Court and list the matter for final hearing in its due course as per roster. Sd/- Chandra Bhushan Bajpai Judge	
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