

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 805 of 2016**

State Of Chhattisgarh Through The Station House Officer, Police Station Chhawani, District Durg Chhattisgarh.

---- Petitioner**Versus**

1. Pappu @ Nasim S/o Najir Ahmad R/o Gandhi Chowk Camp -2, Police Station Jamul, District Durg Chhattisgarh.
2. Salim Quraishi S/o Shekh Gaffar R/o Housing Board Quarter No. L/c 27, Jamul, Police Station Jamul, District Durg Chhattisgarh.
3. Mohd. Akram S/o Mohd. Khalil R/o Housing Board Jamul, Police Station Jamul, District Durg Chhattisgarh.
4. Mohd. Vakil S/o Mohd. Nazir R/o Shantipara, Camp-1, Police Station Chhawani, District Durg Chhattisgarh.
5. Amjad Ali S/o Mohd. Salauddin R/o Camp-2, Police Station Chhawani, District Durg Chhattisgarh.
6. Akbar Khan S/o Mansur Khan R/o Ahmad Nagar, Camp-2, Police Station Chhawani, District Durg Chhattisgarh.

-----Respondents

For Petitioner/State:
For Respondents:

Shri Satish Gupta, Government Advocate.
None.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

2.8.2016

1. The present Cr.M.P has been filed by the State challenging the judgment of acquittal dated 25.4.2016 passed by the JMFC, Durg in Criminal Case No.649/2008 acquitting the Respondents for the offence punishable under Sections 147 and 324/34 IPC.

2. Brief facts relevant for adjudication of the present Cr.M.P are that on account of an old dispute and enmity between the Complainant and the Respondents, all the Respondents joined together armed with weapons had attacked Complainant Bhaskar Mudaliyar on 15.5.2003 at around 10.45 in the

night resulting in serious injuries to the Complainant. The Complainant lodged a report at P.S Chawni, Distt. Durg wherein, FIR was registered in Crime No.832/2003 for the offence punishable under Sections 147, 148 and 324 IPC against the Respondents herein and in due course of time, the charge sheet was filed and the matter was put to trial before the Court below vide Criminal Case No.649/2008.

3. During the trial, the Court below framed the charge against the Respondents for the offence punishable under Sections 147 and 324/34 IPC.

4. After the conclusion of the trial, the Court below, vide its judgment dated 25.4.2016 i.e. the impugned judgment, acquitted the Respondents from the charges. The finding of the Court below was based on the fact that firstly the prosecution did not adduce the evidence of the witness to the seizure, the doctor was not examined to substantiate the medical report and more importantly, the investigating officer also was not examined because of his death during trial and lastly, the Court below found that there was material contradiction in the statements of the eye witnesses who have been examined during the course of the trial.

5. Assailing the said impugned judgment, learned State Counsel submits that though there is a serious lacuna on the part of the prosecution in not examining the seizure witnesses and the doctor to prove the medical report, but the Court below could have convicted the accused persons on the basis of the evidence of the injured person and one of the eye-witnesses.

6. However, learned State Counsel was however not in a position to show as to how only on the basis of the statement of the injured witnesses, without there being any medical evidence and further the seizure has not been proved because of the non-examination of the seizure witnesses, the offence

for which the accused persons have been charged can be said to be established beyond reasonable doubts. Further, the State Counsel also was not in a position to provide satisfactory explanation to the contradictory statements of the eye-witnesses examined. To add with the above lacuna, the Investigating Officer also could not be examined to prove the case of the prosecution.

7. Thus, in the opinion of this Court, no strong case has been made out by the State for grant of permission or leave to appeal against the judgment of acquittal.

8. The instant Cr.M.P thus being devoid of merits, deserves to be and is accordingly dismissed. Consequently, leave to appeal also stands rejected.

Sd/-
(P. Sam Koshy)
JUDGE