

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 14 of 2017**

State of Chhattisgarh through District Magistrate Mahasamund,
Chhattisgarh.

---- **Petitioner**

Versus

Dilip Kumar Yadav @ Rajesh Yadav, aged about 46 years, R/o Isaipara,
Mahasamund, Police Station & District Mahasamund, Chhattisgarh.

---- **Respondent**

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

Hon'ble Shri Justice P. Sam Koshy

Order On Board

14/02/2017

The present CrMP has been filed seeking for grant of leave to appeal against the judgment of acquittal dated 11.04.2016 passed by the Chief Judicial Magistrate, Mahasamund (CG) in Criminal Case No. 732/2014 whereby the Court below has acquitted the respondent from the charges under Sections 341, 294 & 323 of IPC.

2. The facts in brief are that an FIR Ex. P-1 was lodged by the complainant Sushil Jaal (PW-2) on 28.09.2013 alleging that the respondent had put him under wrongful confinement and used abusive language and also beat him. After investigation the matter was put to trial before the Court of Chief Judicial Magistrate, Mahasamund where the respondent was prosecuted for the offence under Sections 341, 294 & 323 of IPC .

3. After completion of the trial, the Court below found that the prosecution has not been able to establish the case beyond all

reasonable doubt. Thus, vide impugned order dated 11.04.2016 acquitted the respondent from the charges which were levelled against him.

4. Counsel for the State submits that it is a case where the prosecution in fact tried to establish its case by leading three eye witnesses i.e. PW-1 Anup Kumar, PW-2 Abdul Alim and PW-4 Sunil Das but the evidences of these witnesses have not been properly appreciated by the Court below and in a mechanical manner passed the impugned order. He further submits that it is a case where the report was promptly lodged and the evidence led by the prosecution itself sufficiently proves the case of the prosecution before the Court below. Thus, State counsel prays for grant of leave to challenge the impugned judgment of acquittal.

5. Having perused the contentions put forth by the State counsel and on perusal of the record what clearly reflects is the fact that the Court below has found material contradictions in the statements of the eye witnesses which create a great element of doubt on the prosecution story. Some of the material contradictions which have been taken note by the Court below are that PW-3 was the person who has been shown as an eye witness in the FIR. The said PW-3 in both the FIR as well as 161 CrPC statement specifically states that when the incident occurred, there was nobody present on the spot except he (PW-3) and the victim PW-2. Subsequently, the statement of PW-1 and PW-4 have still been recorded showing them to be eye witnesses to the incident though their names do not appear in the FIR nor do their names appear in the case diary statement. It is also reflected from the record that the victim PW-2 in his evidence has stated that PW-1 & PW-4 had asked him to lodge the FIR and it was at their behest the FIR was lodged. However, in spite of that,

the victim while lodging the FIR did not refer the name of PW-1 and PW-4 in the FIR and also in the case diary statement which also gives rise to a great element of doubt on the prosecution story as also it creates a doubt on the version of PW-1 and PW-4. If relying upon these infirmities, the Court below has granted the order of acquitted, the same cannot be said to be a perverse finding nor can it be said to be contrary to the evidence which has come on record.

6. For the aforesaid reasons, this Court is of the opinion that no strong case is made out for grant of leave to appeal against the impugned judgment of acquittal dated 11.04.2016. Accordingly, the present CrMP being devoid of merit stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE