

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 323 of 2017

The State Of Chhattisgarh, Through- District Magistrate, Raipur,
Chhattisgarh

---- Appellant

Versus

Manoj Kumar Chandravanshi, S/o. Bhagirathi Chandravanshi, Aged About
30 Years, R/o. Murrabhatti, Near Janghel Health Club, Police Station-
Gudiyari, District Raipur, Chhattisgarh

---- Respondent

For Appellant : Mr. O.P. Sahu, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27.03.2017

1. Leave to appeal is against the order dated 15.11.2016 passed in Criminal Case No.270/2015 by the Court of Judicial Magistrate First Class, Raipur, wherein the respondent/accused Manoj Kumar Chandravanshi has been acquitted.
2. As per the prosecution case, it is alleged that on 23.12.2015 at about 2:45, the accused has abused one Rajnish Rao and assaulted him on his head by a container of a milk; thereby he sustained injuries. After the investigation and medical report, the charge sheet was filed. During the trial, the accused denied the charges, thereafter, the trial commenced.
3. The learned Court below has acquitted the accused since the prosecution failed to produce the witness namely the complainant himself for his evidence despite several opportunities.

4. Learned counsel for the State/appellant would submit that the order of the trial Court is completely illegal, as the trial Court should have issued a warrant in absence of service of summons and should have procured the attendance of the complainant and therefore he submits that the order is liable to be set aside.
5. Perused the order of the trial Court. The trial Court mainly acquitted the accused on the ground that the State has failed to produce the witness despite several opportunities granted. The statement under Section 313 recorded by the Court would show that the accused has not answered the questions to his prejudice and has not admitted the guilt during framing of charges.
6. Perusal of the order sheet would show that initially the case was fixed for evidence on 06.06.2016. On 06.06.2016 no witness appeared and the witnesses were shown as not served. Subsequently, the case was listed for 30.06.2016 and on that date, the witnesses were also not present, no summons were issued and the case was fixed for 11.07.2016. On 11.07.2016 also no witness appeared and the case was adjourned to 16.08.2016. On 16.08.2016 also no witness appeared and the order sheet shows the summons were issued for appearance. Thereafter, on 26.08.2016 summons of Rajnish Rao returned unserved and again the summons was directed to be issued to Rajnish Rao, the complainant on 06.09.2016. On 06.09.2016 also the summons issued to Rajnish Rao, the complainant, returned unserved and the notices were issued and memo was issued to the persons who were issuing the summons and the case was fixed for 16.09.2016. On 16.09.2016 the order sheet shows that one of the witness namely Govardhan Markande was served, however, he failed to appear, therefore, a bailable warrant was issued and the case was

fixed for 26.09.2016. On 26.09.2016 Govardhan Markande was examined and cross-examined and Rajnish Rao, the complainant, remained absent as summons was not served and the summons was directed to be served through Superintendent of Police and the case was fixed for 18.10.2016.

7. Subsequent order sheet shows that on the next date also, the summons was unserved and again date was given for 04.11.2016. On 04.11.2016 again the summons report remained absent and last chance was afforded with a direction that in absence the witnesses right to lead evidence of the prosecution would be closed and the case was fixed for 15.11.2016. On 15.11.2016 again the summons returned unserved and thereby the right to lead evidence of the complainant was closed. One of the witness Gurucharan Singh S/o. Mahendra Singh was examined which shows that he has not supported the case of the prosecution. Taking into totality of the case, it appears that despite several opportunities, the State has failed to serve the complainant and produce him before the Court for his examination.
8. In a result, when the State itself has failed to procure the appearance of the witnesses then it cannot be allowed to take the advantage to say that the Court should have issued the arrest warrant to procure the attendance of witnesses. In absence of any provisions that the person is avoiding the service or after service of summons, he has failed to appear, direct warrant cannot be issued. Considering the totality of the case, I do not find any apparent wrong, gross mistake has been committed by the Court below and on the other hand the mistakes are mainly attributed to the State who has failed to produce the witness.

9. In the result, the order passed by the learned Judicial Magistrate First Class, Raipur, do not appears that it suffers with any illegality or is perverse. Consequently, the Cr.M.P. has no merit and it is accordingly dismissed at the admission stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge