

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 522 of 2017

- State of Chhattisgarh through The Incharge, Police Station Ganj,
District- Raipur, Chhattisgarh. --- **Petitioner**

Versus

- Madhu Barman S/o Late Tatu Barman, Aged About 45 Years R/o
Village Gudhiyari, Gogaon, Police Station Gudhiyari, District- Raipur,
Chhattisgarh. --- **Respondent**

For the applicant : Mr. Anupam Dubey, Dy.Govt. Adv.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18.07.2017

1. Heard on application for grant of leave to appeal.
2. This petition has been filed against the order dated 19.12.2016 wherein the learned Court of Judicial Magistrate First Class, Raipur has acquitted the accused Madhu Barman u/s 279 and 338 of IPC.
3. As per the case of prosecution on 15.01.2015 the victim Amalyan injured was going on his motorcycle C.G.04/K.Y.9706 near a place Telgani Naka. At that time, the accused who was driving a pick-up Van bearing No.C.G.04/2A 8385 in a rash and negligent manner dashed the motorcycle of victim. By the impact of such accident, Amalyan Mandal sustained injury and fracture of his leg was caused. After investigation, the charge sheet was filed by the prosecution. During the course of trial, accused abjured guilt. The prosecution on their behalf could examine only one eye-witness namely Mastan Ali who did not support the case of prosecution. Thereafter, the other witnesses could not be

produced. Consequently the accused was acquitted as the prosecution failed to prove charges.

4. Learned State Counsel would submit that the prosecution should have been given further opportunity to produce the witness Amalyan Mandal and should have procured his attendance by coercive method. Therefore the acquittal order passed by the court below is illegal and cannot be sustained.
5. Perused the record of the court below. The record shows that one Mastan Ali who is said to be eye-witness has been examined as P.W.1. He has not supported the case of prosecution. The I.O., C.R. Sahu has registered the case and conducted the investigation. The record would further show that witness Amalyan Mandal was served with summons on his address for appearance on 02.09.2016 which came back with an endorsement that he is busy in his duty, therefore, could not come. Subsequently summons for appearance on 14.09.2016 was sent which could not be served on the ground that he is busy. Lastly the summons were served on Amalyan Mandal for appearance to adduce evidence on 21.10.2016 and it was received by family members. However, he had chosen not to appear. Likewise, the other witness Asam Ali has also failed to appear as a witness on the dates fixed for 02.09.2016 and 14.09.2016. Consequently when there being no alternative left out, the Court closed the evidence and acquitted the accused.
6. The court cannot wait for an indefinite period when the complainant and the other witnesses fail to appear. It appears that the summons were ultimately served to the family members of the complainant but despite that he did

not choose to appear. It also come on record that earlier two summons were issued to him for his appearance on 02.09.2016 and 14.09.2016 respectively but could not served for the reason that he is busy which also shows that the complainant himself as also other witness were reluctant to adduce evidence. In such circumstances, either the order of acquittal passed by court below or the approach of the prosecution cannot be faulted with.

7. In the result, I do not find any reason to allow this application for grant of leave to appeal. Accordingly, it is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**