

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.421 of 2016**

- Vinod Kumar Chandrakar S/o Khilawan Singh Chandrakar Aged About 40 Years R/o Gorkapar, P.S. - Anda, Tahsil - Gunderdehi, District - Durg Chhattisgarh

---- Petitioner

Versus

1. Kamlesh Verma S/o Lakhanlal Verma Aged About 44 Years R/o Kurumpuri, Infront Of Dabha, P.S. Tahsil & District - Nuapahaha (Orissa)
2. State Of Chhattisgarh Through - District Magistrate, District - Durg - Chhattisgarh

---- Respondents

For Petitioner	: Shri PR Patankar, Advocate.
For respondent No.2/State	: Shri Vivek Singhal, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****21.3.2017**

Notice issued to respondent No.1 returned unserved as he is not residing in the given address for more than two years and his present address is not known.

2. Heard instant Cr.M.P. filed under Section 378(4) of the Cr.P.C. for leave to appeal against judgment dated 25.01.2016 passed by Additional Sessions Judge, Durg (CG) in Criminal Appeal No.99/15 whereby and whereunder the learned appellate court allowed the appeal filed by respondent No.1/appellant /accused who was convicted by the Judicial Magistrate First Class, Durg in a Criminal Complaint Case No.01/12 under Section 138 of the Negotiable Instruments Act, 1881 vide judgment dated 26.8.2015 and sentenced accordingly. Against the judgment

passed by the appellate court, the petitioner/complainant has preferred instant Cr.M.P. for leave to appeal along with acquittal appeal under the proviso of Section 372 of Cr.P.C. as the appellate court acquitted the accused.

3. Learned counsel for the petitioner would submit that in the present matter appeal would lie in the light of judgment dated 22.9.2016 passed by Division Bench of this Court in Criminal Revision No.643/15 (Sunil Jangde vs. State of CG & 3 ORs.).

4. Heard the matter for grant of Special Leave to appeal from the order of acquittal.

5. Learned counsel for the petitioner would submit that the appellate court erred in law also for the fact and acquitted respondent No.1 marshalling of the evidence is not in accordance with law. Though there was proof regarding issuance of cheque and its disowner, the appellate court merely on the basis of presumption acquitted the accused/respondent No.1. Hence, special leave to appeal may be granted.

6. Perused the judgment passed by the Court below and also perused the evidence adduced by the parties.

7. On due consideration, this is a fit case where special leave to appeal be granted against respondent No.1. Consequently, instant Cr.M.P. is hereby disposed of.

8. Registry is directed to register the matter under the head of acquittal appeal.

9. Learned counsel for the petitioner/appellant would submit that as respondent No.1 is not traceable as per the service report, he be given an opportunity to take suitable steps regarding service to respondent No.1.

10. As prayed, list this matter for further hearing and also on admission after three weeks.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**