

HIGH COURT OF CHHATTISGARH, BILASPUR

(SB: Hon'ble Mr. Justice Ram Prasanna Sharma)

CRMP No. 1193 of 2018

- State Of Chhattisgarh Through- The Incharge Police Station City Kotwali, District- Balodabazar, Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh

---- Applicant

Versus

- Rajkumar Gayakwad S/o Anand Gayakwad Aged About 32 Years R/o- Village Kura Nandghat, District- Bemetara, Chhattisgarh., District : Bemetara, Chhattisgarh

---- Respondent

For Applicant/State : Mr. Suryakant Mishra, PL.

For Respondent : None

Order on Board

(24-08-2018)

1. Heard on application for condonation of delay in filing the instant Criminal Miscellaneous Petition.
2. For the reasons mentioned in the application and as per law laid down by Hon'ble the Supreme Court in the matter of **State of Haryana vs. Chandra Mani and others, reported in (1996) 3 SCC 132**, the application is allowed and delay in filing the instant CRMP is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973.

4. It is an acquittal appeal against the judgment dated 2-2-2018 passed by the Judicial Magistrate First Class, Balodabazar (CG) in Criminal Case No. 3016 of 2014 wherein the said court acquitted the respondent for commission of offence under Sections 279 & 338 of IPC, 1860.
5. To substantiate the charge, prosecution examined as many as five witnesses.
6. PW/1 Chandrika Prasad deposed that he received information about the incident on telephone. This witness is not the real witness and his version is hearsay in nature. PW/2 Rajeshwari Verma deposed (para 3) that she has not seen the respondent driving the vehicle. PW/3 Chetan Kumar Sahu deposed that he is not aware of the fact as to where the incident happened. PW/4 Sanat Kumar Sharma is a motor mechanic who inspected Scooty after the incident. PW/5 Dr. Abhijit Banerjee is a person who conducted examination on injured Rajeshwari Verma.
7. From the entire evidence, negligence driving of the respondent is not established which is *sine qua non* for establishing the offence. The respondent who already suffered agony of long trial before the trial Court cannot be subjected to face the same twice.

8. Accordingly, the application for grant of leave to appeal is rejected and consequently, the petition filed by the applicant/State is also dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju_