

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1864 of 2018**

State of Chhattisgarh, Through Police Station Bhakhara, District-Dhamtari (C.G.)

---- **Petitioner**

Versus

Shri Ram Nishad, S/o Shri Nakchheda Ram, Aged About 53 Years, R/o Siltara, Police Station Bhakhara, District- Dhamtari (C.G.)

---- **Respondent**

For State/ Petitioner : Mr. Vinod Kumar Tekam, PL.

For Respondent : Mr. R.S. Patel, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

06/12/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 59 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 24.03.2018 passed by Judicial Magistrate First Class, Link Court- Kurud, District- Dhamtari (C.G.) in Criminal Case No. 31/2014, wherein the said court acquitted the respondent for commission of offence under Sections 279 & 304A of IPC, 1860 & Section 146/196 of Motor Vehicle Act, 1988 (for short "the Act, 1988").

5. The case of the prosecution is based on statement of Ramesh Kumar (PW-1), Shiv Kumar (PW-6) & Indal Ram (PW-10). Rest of the witnesses have assisted during investigation after registration of FIR. Though, Ramesh Kumar (PW-1) deposed in his examination-in-chief that the offending vehicle-tractor was driven by the respondent and dashed his father deceased- Ganesh Ram, but this witness is not stable in his version in cross-examination. As per version of this witness, he has not named the respondent in FIR lodged by him. Again, he has not mentioned in FIR that the offending vehicle was driven by the respondent in rash or negligent manner. There is no explanation from the statement of this witness as to why he has not stated name of the respondent in FIR when he is an eyewitness of the incident. In absence of explanation, the trial court opined that version of this witness is not dependable to bring home the guilt against the respondent.
6. Shiv Kumar (PW-6) is owner of the offending vehicle-tractor bearing registration No. CG-05 G-5976. In his examination-in-chief, he deposed that the vehicle was handed over to the respondent by him, but in his cross-examination, he deposed that the vehicle was handed over to one Ramesh Kumar Mehta who was resident of village- Purena. When the witness is not stable to his version in examination-in-chief, the trial court opined that his statement is not sufficient to establish the charge against the respondent.
7. Indal Ram (PW-10) though deposed in his examination-in-chief that the vehicle was driven by the respondent at the time of the

incident, but in his cross-examination, he deposed that he has not seen the respondent driving the offending vehicle.

8. Looking to the entire evidence adduced by the prosecution, the trial court opined that the charges are not established regarding offence under Section 279 & 304A of IPC.
9. Though, Constable- Sudama Prasad Sahu (PW-8) deposed that he investigated the matter, but in his statement, he admits that insurance papers were seized during course of the investigation. When respondent was in possession of insurance certificate, it cannot be held that he was driving in contravention of Section 146 of the Act, 1988 which is punishable under Section 196 of the Act, 1988.
10. The trial court has elaborately discussed the entire evidence and recorded judgment of acquittal. After reassessing the entire evidence, this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
11. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge