

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2389 of 2018**

- State Of Chhattisgarh Through Police Station- Lakhanpur, District- Surguja, Chhattisgarh.

---- Petitioner**Versus**

- Chetan Ram Rajwade S/o Shri Ramnath Rajwade Aged About 29 Years R/o Village- Taraju, Police Station- Lakhanpur, District- Surguja, Chhattisgarh.

---- Respondent

 For Petitioner : Mr. Vinod Tekam Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****28/11/2018**

1. Heard on I.A.No.1, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, same is allowed and delay of 69 days in filing the petition is hereby condoned.
3. Also heard on the application filed under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. This petition is preferred under Section 378 (3) of the Code of Criminal Procedure, 1973 against order dated 17.5.2018, passed by Judicial Magistrate First Class, Ambikapur, District Sarguja(C.G.) in Cr. Case No. 4394/2010, wherein the said court has acquitted the respondent for the charges under Sections 341, 294, 506 Part II and 323 of the I.P.C.
5. In the present case, name of the complainant is Duhan Ram Rajwade (PW1). He deposed that he has been assaulted by the respondent with a Hockey stick. From the evidence of this witness only offence can be made out is under Section 323 IPC which is a

non-cognizable offence. From the evidence of the complainant himself, no other offence is made out.

6. As per Section 155 (2) Cr.P.C., no Police Officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. When the offence under Section 323 IPC was non-cognizable, investigation without permission of the competent Magistrate is invalid, therefore, the finding of the trial Court is not liable to be interfered with. It is not a case where the respondent should be called for full consideration of the case.
7. Accordingly, the prayer for leave to appeal is rejected.
8. Consequently, Cr.M.P. also stands dismissed.

Sd/

(Ram Prasanna Sharma)
Judge