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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1004 of 2019**

- State of Chhattisgarh, Through the Incharge Police Station Ambikapur, District- Surguja (CG)

---- Appellant/Applicant**Versus**

- Mohd. Salim Khan S/o Mohd. Sharif Khan, Aged about 54 years, R/o. Village Juna Gathri, Near Soni Clinic, P.S. Ambikapur, District Surguja (CG)

---- Respondent/Accused

For Applicant/State : Shri V.R. Tiwari, Addl. A.G. and
Shri Rajnish Singh Baghel, Dy.A.G.

For Accused/Respondent : Shri H.S. Patel and Shri Malay Kumar Bhaduri,
Advocates

Hon'ble Shri Justice Prashant Kumar Mishra, J
Hon'ble Shri Justice Gautam Chourdiya, J

Order on Board by Justice Prashant Kumar Mishra**06.09.2019**

I.A. No. 1 of 2019, application for condonation of delay of 78 days in filing of Cr.M.P.

2. On due consideration, the application is allowed and the delay in filing the Cr.M.P. is condoned.

3. Shri R.S. Sharma, Principal Secretary (Law and Legislative Affairs Department), Government of Chhattisgarh, Shri Pawan Deo, Director (Prosecution), Government of Chhattisgarh and Registrar General, High Court of Chhattisgarh are present in Court.

4. Reports filed by the Director (Prosecution), Secretary, Law and Legislative Department and Registrar General, High Court are perused.

5. The Director (Prosecution) has highlighted that a regular cadre of prosecution officer is required to be created so that proper official monitoring as well as fixing of accountability in conduct of sessions trial or special criminal cases can be done. Shri Pawan Deo, Director (Prosecution), would refer to the proposal

for creation of such cadre which is pending before the State Government. The joint report submitted by Secretary, Law and Registrar General would highlight the proceedings of the criminal trial which eventually resulted in acquittal of the accused.

6. Reading of the joint report compel us to believe that the subject trial has not been conducted properly by the prosecution nor the Court has taken proper and adequate steps to ensure presence of the witnesses. The failure lies with both the wings of the criminal justice system. While the prosecution did not take desired steps for producing the witnesses, the Court also failed to ensure compliance of its own order directing production of witnesses including the coercive steps taken for ensuring their presence. It is also reflected that in its zeal to conclude the trial of an old case, the judicial officer has hurriedly completed the trial. While the cases are to be disposed of within reasonable time, it is never the intent of the justice delivery system to hurry up the matter by allowing lackadaisical trial. In a case like the present one where everybody has played its own part in securing acquittal, it is high time the Court must observe that it is the duty of the prosecution as well as the Court to maintain proper balance to secure the ends of justice. It hardly matters, whether the trial ends in acquittal or conviction. What the prosecution and the Court should ensure is to conduct a trial in a fair and impartial manner. Completion of trial does not mean that witnesses are not produced and proper efforts not taken for their production. Despite availability of documents incriminating accused, those have not been proved in accordance with law by producing the witnesses. In such a situation, Court is helpless and acquittal is necessary outcome.

7. In the facts and circumstances of the case, acquittal of accused in the matter where he is accused of corruption does not appear to be proper, therefore, we are inclined to grant leave to appeal against acquittal. Accordingly, Cr.M.P. is allowed.

8. Let regular acquittal appeal be registered and the same be placed for final hearing at motion stage on 16th October, 2019.

9. Registry shall prepare the paper-book before the next date of hearing.

10. State Government shall consider the proposal moved by Director (Prosecution) for creation of regular cadre of prosecution officers including the public prosecutor. The Judicial Officers are also expected not to decide the cases in hurried manner resulting in unnecessary acquittal. Law Department shall also look into the matter to put in place proper monitoring and accountability of Director Prosecution and Additional Director Prosecution even with present system.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

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