

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 1049 of 2014

- State of Chhattisgarh Through Station House Officer, P.S. Sarkanda, Distt. Bilaspur, C.G.

---- Applicant

Versus

1. Phunthru @ Shashikant Vaishnav S/o Ramlochan Vaishnav, Aged About 20 Years R/o. Nutan Chowk, Near Shiv Shitla Temple, P.S. Sarkanda, District-Bilaspur, C.G.
2. Sonu Rao @ Bhupendra Rao Maratha S/o. Rajkumar Maratha Aged About 26 Years, R/o. Jorapara, P.S. Sarkanda, Distt. Bilaspur C.G. Original R/o. Akaltara Irrigation Colony, P.S. Akaltara, Distt. Janjgir-Champa C.G.
3. Raja Kachhwaha S/o. Pancham Kachhwaha Aged About 23 Years R/o. Telipara, Near R.K. Boot House, Lane No.03, P.S. City Kotwali, Distt. Bilaspur C.G.
4. Sandeep Singh S/o. Ramayan Singh Thakur Aged About 22 Years R/o. Chingrajpara, P.S. Sarkanda, Distt. Bilaspur C.G.

---- Respondents

For Applicant-State :- Ms Madhunisha Singh, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J**02/08/2019**

1. Heard.
2. On due consideration, delay of 58 days in filing the present Cr.M.P. is condoned. Accordingly, I.A. No.1 is allowed.
3. The trial Court has convicted the accused-Vishal Tiwari but has acquitted the present respondents of the charges under Sections 394, 395 and 201 of IPC.
4. As per the prosecution case PW 4, Devi Singh Rathor, was working with Babla Petrol Pump. At about 12:45 pm on 27.09.2010, he was carrying Rs.5,67,000/- and was proceeding towards Punjab National Bank. When he reached near F.C.I. godown Lingiyadih road 2 persons on a CD Delux motorcycle and 3 persons on CBZ motorcycle were standing on the spot. One of the miscreants stopped him and after some scuffle he threw chilly powder in his eyes and looted the bag carrying the amount. In the FIR lodged immediately within one and a half hour, he has attributed the commission of loot to one of the accused and some overt act by another accused, who both were in the first motorcycle, however, he would not attribute any overt act to the other 3 persons who were on CBZ motorcycle. In his case diary statement recorded on the same day he

would again not name any of the accused nor attributes any overt act to the 3 persons who were on CBZ motorcycle. In the said case diary statement he mentions the built of the accused who committed the loot, however, he has not mentioned the built of other 4 accused nor states that he can identify them. No test identification parade has been conducted in course of investigation.

5. In course of trial, PW-4 identified all the accused persons, however, the trial Court convicted only one of them for the reason that according to the witness/victim only one person had committed the offence.
6. Without commenting on the validity of the identification of accused-Vishal Tiwari because his appeal against conviction is pending before this Court, suffice it would be to observe that in his examination-in-chief PW-4 names only one accused i.e. Vishal Tiwari. He mentions that another boy threw chilly powder in his eyes but he would not mention the name of this accused nor the fact as to whether the other accused, who threw chilly powder, was sitting in the motorcycle with Vishal Tiwari. Thus, there is no evidence as to who was the person, out of the remaining 4 accused, who threw chilly powder in his eyes.
7. It appears that the view taken by the trial Court, raising

doubt over the prosecution case as against the present respondents, is one possible view which can be taken on the basis of evidence on record.

8. Therefore, we are not inclined to grant leave to appeal, the Cr.M.P. deserves to be and is hereby dismissed.
9. Any observation made in this order shall not affect the appeal preferred by Vishal Tiwari in any manner.

Sd/-

(Prashant Kumar Mishra)
Judge

Ankit

Sd/-

(Gautam Chourdiya)
Judge