

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1889 of 2019**

- Hari Ram Verma S/o Shri Seva Ram Verma Aged About 35 Years R/o Pooja Kunj, Ward No. 01, Nayapara Durg, P. S. City Kotwali, Tahsil And District Durg Chhattisgarh.

---- **Petitioner****Versus**

1. Shiv Kumar Lodhi S/o Prasadi Verma Aged About 36 Years R/o Shergarh, P. S. Khairagarh, District Rajnandgaon Chhattisgarh
2. Mahesh Kumar S/o Sohan Lal R/o Bafara, P. S. Khairagarh, District Rajnandgaon Chhattisgarh
3. Madhav Banjare S/o Bise Lal Banjare Aged About 35 Years R/o Village Jalbandha/ Pawantara, P. S. Khairagarh, District Rajnandgaon Chhattisgarh

---- **Respondents**

 For the Petitioner : Shri RK Gomasta , Advocate
 For the Respondents : Not noticed

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****20.11.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.
2. On due consideration, the application is allowed and the delay in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(4) of CrPC.
4. On due consideration, leave is granted.
5. This petition has been preferred against judgment of acquittal dated 18.3.2019 passed by Judicial Magistrate First Class, Durg (CG) in CIS No.737/2002 wherein the said Court

acquitted the respondents for the charges under Sections 341, 392, 323/34 of the Indian Penal Code, 1860.

6. It is a complaint case filed by complainant/appellant Hariram Verma who is PW-1. Other witnesses examined by the complainant/appellant were hear-say in nature because they deposed before the trial Court on the basis of information given by the complainant. Though Hariram deposed before the trial Court that he has been assaulted by the respondents, but no medical evidence was produced before the trial Court to establish the charge. No medical expert was examined to substantiate the charge that any injury was found on the body of the complainant. In absence of medical evidence, the trial Court recorded finding that charge under Section 323 IPC is not established.

7. For commission of offence under Sections 341 and 392 IPC, the complainant did not state in his complaint regarding description of currency notes which is the subject matter of the robbery. It is not clear from the evidence of the complainant as to which denomination of currency notes were removed from his possession. No recovery was made from any of the respondents in this regard. Therefore, in absence of description of currency notes and also in absence of seizure, the trial court recorded finding that the charges under Sections 341 & 392 of IPC regarding wrongful restraint and robbery are not established.

8. View taken by the trial Court is one of the plausible view which is based on relevant material placed on record. It is settled law that if two views are possible, the view in favour of the

accused should be preferred. In view of the above, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case where the respondents should be called for full consideration of the case.

9. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE