

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1973 of 2018**

- The State Of Chhattisgarh, Through Police Station Khamtarai, Distt. Raipur (CG)

---- Petitioner

Versus

- Sheetal Prasad Rajak, S/o. Shri Ganeshram Rajak, aged about 22 years, R/o. Village Konari, Police Station Kasdol, Tahsil Palari, Distt. Baloda Bazar (CG)

---- Respondent

For the Petitioner/State : Shri AN Bhakta, Dy. Advocate GeneralFor the respondent : None
-----**Hon'ble Shri Justice Ram Prasanna Sharma****Order On Board****27.02.2019.**

1. Heard on IA No.01/2019 for condonation of delay in filing the petition.

2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **1996 3 SCC 132**, the delay of 46 days in filing the petition is hereby condoned.

3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.

4. This petition is preferred against the judgment of acquittal dated 17.4.2018 passed by Judicial Magistrate First Class, Raipur (CG) in Criminal Case No.21182/2016 wherein the said Court acquitted the respondent for the charges under Sections 279 and 338 of the Indian Penal Code, 1860.

5. The respondent was charge sheeted for driving vehicle - Motor Cycle bearing registration No.CG 22 AB 2420 at public place near Vinu Petrol Pump, Dharamkata, Raipur, dashed one Sundaru Soni. Due to dashing on the mouth of said Sundaru Soni his two teeth were broken.

6. Case of the prosecution rests on the statement of Sundaru Soni, but as per the version of this witness the respondent is not known to him earlier and his statement was recorded only after showing him the photograph of the respondent which was fixed in the memo of arrest. It means the photograph of the respondent was shown to this witness before his examination in the trial Court. He did not identify the respondent himself while deposing before the trial Court. Looking to his evidence, the trial Court opined that the report was not lodged naming the respondent as culprit and the respondent was not known to this witness, therefore, identification parade must have been conducted during the investigation. As this witness has not identified the respondent before the trial Court but photograph of the respondent was shown before the statement of this witness on court, the trial Court opined that there is possibility of implicating the respondent without identifying him. Rest of the witnesses are not the witnesses of the incident and looking to the entire record, the trial Court opined that charges levelled against is not established. Therefore, this Court has no reason to interfere with the finding of the trial Court. This is not the case where the respondent should be called for full consideration of the case.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE

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