

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1064 of 2014

- Madanlal Mahobiya s/o late Lakhalal Mahobiya, Aged About 40 Years
R/o. Ward No.4, Main Road Gurur, P.S. Gurur, Distt. Balod C.G.,

--- Petitioner

Versus

1. R.K. Mandlesh S/o Shri Suklal Mandlesh Aged About 52 Years R/o. Vill. Dondi, P.S. Dondi, Distt. Balod C.G.
2. M.D. Tiwari S/o Late Ramlal Tiwari Aged About 60 Years at present R/o. Amatalab Road Shardha Nagar, In Front Of House Of Ramu Mistri, Distt. Dhamtari C.G., District : Dhamtari, Chhattisgarh
3. State Of Chhattisgarh Through Station House Officer, Police Station Balod, District : Balod

---- Respondents

For Petitioner	:	Mr. B.P. Singh, Advocate.
For Respondents 1 and 2	:	Mr. Shikhar Bakhtiyar, Advocate
For Respondent 3/State	:	Mr. Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

23/01/2019

1. Heard on admission.
2. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 19.8.2014, passed by the 2nd Additional Sessions Judge, Balod, District Balod (CG) in Cr. Appeal No.74/13 and Cr. Appeal No. 167/13, wherein the said Court by allowing the appeal acquitted both the respondents for charge under Section 426 IPC and reversed the finding of Judicial Magistrate Second Class, Balod in Cr. Case No. 17/2013 dated 8th August, 2013.
3. Brief facts of the case are that on 21st October, 2010 at about 5.00 pm, Bus of the appellant met with an accident at Village Kochera and hit the tree and stopped there. The appellant informed the

incident to Police Station Gurur, where respondents 1 and 2 were posted as Police Officers and they removed the Bus with the help of JCB, 3DX bearing registration No. CG 04 CB 7282 and due to this the said Bus was badly damaged.

4. The trial Court convicted the respondents for offence under Section 426 IPC to which, in appeal, the 2nd Additional Sessions Judge acquitted both the appellants/respondents of the charge under Section 426 IPC.
5. To substantiate the charge prosecution has examined as many as 7 witnesses, but no one is eye-witness to the incident except Kishor Kumar(PW4). Kishor Kumar (PW4) deposed that the Bus which was stopped by hitting the tree, was removed by JCB machine and respondent M.D. Tiwari directed for removing the said Bus by the JCB. Both the respondents were posted in jurisdictional Police Station and they tried to bring out the Bus from the tree where it was stopped.
6. The only issue for consideration of this Court is whether removing of Bus which hit and stopped on the tree by JCB machine is any intentional act or it is an act with knowledge that it is likely to cause damage to the complainant. The only evidence which is adduced by the prosecution is that both the Police Officers have tried to remove the Bus from the tree where it was stopped.
7. Looking to the evidence, it is not clear that any of the respondent had *mens rea* on their part. To fasten any criminal liability *mens rea* with guilty mind is sine qua non. The police officers were posted at Police Station where the report was lodged regarding the accident of the Bus. After receiving notice of cognizable offence, they rushed

to the spot and tried their level best to remove the Bus which cannot be termed as criminal act. Therefore, finding arrived at by the Court of Sessions is one of the plausible finding.

8. It is settled law that when two views are possible, the view which is favourable to the accused/respondent should be accepted. Finding of the said court is not based on extraneous or irrelevant material, but it is based on relevant material placed on record and legal aspect of the matter which is not liable to be interfered with invoking jurisdiction of appellate court.
9. Accordingly, the Cr.M.P. is liable to be and is hereby dismissed at the motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge