

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2384 of 2018**

State of Chhattisgarh: Through Its Police Station Civil Lines,
Raipur, District - Raipur, (C.G.)

---- **Petitioner**

Versus

Avkash Pathak, S/o - Late Pandit Kanti Kumar Pathak, Aged
about - 53 years, R/o - Nawagaon, Post and Police Station
Pandatarai, Tahsil - Pandariya, District – Kabirdham (C.G.)

---- **Respondent**

For State/Petitioner : Shri Ravish Verma, Govt. Advocate.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

06/05/2019

1. Heard on I.A. No. 01/2019, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 122 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 27th March, 2018 passed by Sessions Judge/Special Sessions Judge (Protection of Interest of Debtors of Chhattisgarh Act, 2005) Raipur (C.G.) in Special Criminal Case No. 06/2016 wherein the

said Court convicted the respondent for charge under Section 420 of IPC and sentence of R.I for 5 years and fine of Rs. 2 lakhs and acquitted him for the charges under Section 10 of the Chhattisgarh Protection of Debtors Interest Act, 2005.

5. In Chhattisgarh Protection of Debtors Interest Act, 2005 the competent authority as defined under Section 5 of the Act shall not be below the rank of the District Magistrate and as per Section 4 of the Act the Judge in the said Court must be a Sessions Judge or Additional Sessions Judge under Code of Criminal Procedure, 1973. The complaint under the said Act is filed by the competent authority as per Section 7 of the said Act. As per Section 4 sub-clause (ii) of the Code of Criminal Procedure, the investigation shall be done as per provisions of the Special Act. When competent authority is empowered for complaint under the Act, 2005. The same should be followed for investigation and police authorities cannot be directly intervened in the said matter, therefore, the trial Court is right in holding that the charge under Section 10 of the Act, 2005 cannot be levelled against the respondent, therefore, the said Court passed an order of acquittal and after going through the legal provisions as enacted as per Act 2005 the trial Court recorded a finding and this Court has no reason to take a contrary view. For charge under Section 420 of IPC, 1860. It is not a case of acquittal, therefore, acquittal appeal will not lie as per Section 378(3) of the Code of Criminal Procedure, 1973. It is not a case where

respondent should be called for hearing again for full consideration of this petition.

6. Accordingly, application for grant of leave to appeal is rejected.
7. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

Vasant