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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.45 of 2019**

- State Of Chhattisgarh Through The Station House Officer, Police Station Rajhara, District Balod Chhattisgarh

---- Petitioner**Versus**

- Gurumukh Singh @ Iddu S/o Late Swarn Singh Aged About 47 Years R/o Ward No. 13, In front Of Blue Star Petrol Pump, Chikhlakasa, Police Station Rajhara District Balod Chhattisgarh

---- Respondent

For the Petitioner/State : Shri Ravish Verma, Govt. Advocate

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****18.02.2019.**

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 of 95 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 17.5.2018 passed by Judicial Magistrate First Class, Dallirajhara, Distt. Balod (CG) passed in Criminal Case No.293/2017 wherein the said Court acquitted the respondent for the charges under Section 188 of the Indian Penal Code and under Sections 14 & 15 of MP/Chhattisgarh Rajya Suraksha Adhiniyam, 1990.

5. As per the version of the prosecution, Collector/District Magistrate, Balod vide order dated 23.5.2017 directed the respondent to remove himself out side the district of Balod for one year, but he entered within the area of Balod and was arrested on 01.9.2017 at village Chikhlakasa. The respondent was charge sheeted for the offence under Section 188 of the IPC but cognizance of the said offence could not be taken because of the bar under Section 195 of the CrPC. Cognizance under Section 188 IPC can be taken only on written complaint of the Public Servant whose order is flouted. But no written complaint was filed therefore, the trial court opined that cognizance for offence under Section 188 IPC cannot be taken.

6. Certified copy of the order of the District Magistrate under Section 5 of the MP/CG Rajya Suraksha Adhiniyam, 1990 was not filed before the trial Court. In absence of certified copy of the order, the trial Court opined that if the order is out of record then the respondent cannot be convicted for violation of the said order. The prosecution was under obligation to prove the said order passed by the District Magistrate and in absence of certified copy of the said order, the trial Court recorded finding of acquittal.

7. After reassessing the entire evidence, this Court has no reason to record a contrary finding. It is not a case where the respondent should be called for full consideration of the matter.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE