

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.133 of 2019**

- State Of Chhattisgarh Through The Station House Officer, Police Station- Durg, District- Durg, Chhattisgarh.

---- Petitioner**Versus**

1. Sanjeev Kumar @ W. Rai S/o Raj Kishore Rai Aged About 36 Years R/o Hanumannagar, Titurdih, Police Station- Mohan Nagar, District- Durg, Chhattisgarh.
2. Mukesh Yadav @ Mukku S/o Bal Kishan Yadav Aged About 42 Years R/o Yadavnagar, Gawli Mohalla, Nagpur, Maharastra, At Present Address- Vinoba Nagar, Junwani, Durg, District- Durg, Chhattisgarh.
3. Manoj Singh S/o Govind Singh Aged About 47 Years R/o Kamdarpur, District- Aurangabad, Bihar. Present Address- Sai Lodge, Power House, Bhilai And Ghasidasnagar, Police Station- Jamul, District- Durg, Chhattisgarh.
4. Dilip Singh Rathore S/o P.S. Rathore Aged About 65 Years R/o Nehrunagar, East 75/7, Police Station- Supela, District- Durg, Chhattisgarh.

---- Respondents

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

For the respondents : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****27.3.2019.**

1. Heard on application for grant of leave to appeal under Section 378(3) of CrPC.
2. This petition is preferred against the judgment of acquittal dated 28.9.2018 passed by Fourth Additional Sessions Judge, Durg (CG) in Session Trial No.100/2017 wherein the said Court acquitted all the respondents for the charges under Sections 398, 120-B and 201 of the Indian Penal Code, 1860 and also acquitted

respondent Sanjeev Kumar @ W. Rai for the charges under Sections 25 & 27 of the Arms Act, 1959.

3. In the present case complainant is one Omprakash Prasad who is the employee of IIFL Gold Loan Company situated at Polsaipara, Durg. It is alleged that all the respondents having in possession of some fire arms like country made revolver, committed conspiracy of robbery in the said Company and after commission of offence caused disappearance of the evidence of the offence with intention to screen from legal punishment. The only person who was alleged to be present at the time of the incident is complainant Omprakash Prasad.

4. As per the prosecution, first incriminating piece of evidence is identification by said Omprakash in the Tahsil office. But said Omprakash deposed before the trial Court that he did not identify any of the respondents, but some person present at the time of identification parade told him to indicate one person that he is the culprit that is why he kept his hand over said person. From the entire evidence of this witness, it is not established that he identified any of the respondents as culprit of the offence, therefore, his version is not sufficient to incriminate any of the respondents in crime in question.

5. The other piece of evidence is the report of Cyber cell. It is alleged that one mobile was seized from respondent Dileep Singh Rathore and call details were collected but from the evidence it is clear that the said SIM number from which the call details was obtained was not allotted to respondent Dileep Singh Rathore but it was allotted to his wife namely Manjulata Rathore. From the

evidence of Cyber Cell, it is not established that respondent Dileep Singh Rathore had conversation with any of other respondents for committing any illegal act. There is no eyewitness account to the incident and a person who claimed to be present namely Omprakash is unable to identify any of the respondents. The said Omprakash did not depose before the trial Court that any of the respondents triggered country made revolver during the course of the incident. Therefore, seizure of country made revolver and cartoose is also not connecting piece of evidence. When it is not proved that fire arm was used during the commission of offence, the seizure of country mad revolver has no bearing with the crime in question.

6. On overall assessment of the evidence, it is not established that any of the respondents committed attempt to robbery and they were armed with deadly weapon at the time of the commission of offence. Therefore, evidence of commission of attempt to commit robbery is not established and conspiracy in this regard is also not established. It is also not established that seized articles were used in commission of offence, therefore, causing disappearance of the evidence is also not established. As the use of fire arms is not substantiated by the evidence, charge for possessing of local fire arms and using the same for commission of offence is also not established. The trial Court elaborately discussed the entire evidence and recorded finding of acquittal. After reassessing the entire evidence, this Court has no reason to substitute a contrary finding. This is not a case where

the respondents should be called for full consideration of the matter.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE