

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 886 of 2017

State of Chhattisgarh Through District Magistrate District
Bilaspur Chhattisgarh. ---- **Petitioner**

Versus

1. Amir Khan @ Samidul Khan S/o Harun Khan Aged About 42 Years,
2. Raju Ali @ Gulam Mustfa Khan S/o Soban Khan Aged About 25 Years,
3. Shariful Khan S/o Hasibul Khan Aged About 27 Years,
4. Saidul Khan @ Raju Khan Aged About 24 Years,
5. Harun Khan S/o Majin Khan Aged About 50 Years,
6. Gulam Rasool Khan S/o Soban Khan Aged About 23 Years,
7. Afazl Khan S/o Akbar Ali Aged About 20 Years,
8. Rafeeq Khan @ Rauf Khan S/o Jaleel Khan Aged About 23 Years,

All are R/o Gopal Nagar, Panch Kula District East Mednipur (W.B.)
---- **Respondents**

For State/petitioner : Mr. D.K. Tiwari, Dy.G.A.

For respondents : Mr. Ashok Verma and Mr. Gajendra
Sahu, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board

03.03.2020

1. Heard on I.A. No.1, which is an application for condonation of delay in filing the instant 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 83 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of Cr.P.C.

4. This petition is preferred against the judgment dated 13th of January, 2017 passed by learned Additional Session Judge, Bilaspur (C.G.) in Sessions Trial No. 166/2016 wherein the said Court has acquitted the respondents for commission of offence under Sections 399, 402 of Indian Penal Code, 1860 for preparation of dacoity in the house of one Pathak residing behind medical complex, Bilaspur. On 31st of August, 2016 about 2.30 a.m. at night.
5. To substantiate the charge, the prosecution examined as many as five witnesses. Though, one iron rod was seized from respondent Gulam, one sword was seized from respondent Afzal Khan, one knife was seized from respondent Amir Khan @Saimudul Khan, one rod from Raju ali @ Gulam Mustafa Khan, one rod from Shariful Khan, one knife seized from Saidul Khan, one iron chapad seized from Rafeeq Khan but no articles were produced before the trial Court while the respondents were examined before the said Court. The trial Court after evaluating the evidence recorded finding that articles are not produced before the trial Court therefore, seizure of the said articles is not legally proved. Though, it is deposed that chilly powder was also seized but no examination report was produced before the trial Court that powder which is seized in the present case was really chilly powder. Therefore, evidence of the prosecution witness is not sufficient to establish possession of arms and chilly powder on the part of any of the respondents.
6. There is nothing on record to incriminate against the respondents that their object was to commit dacoity in the

house of the one Pathak because no one deposed on that angle. The trial Court also recorded finding that none of the respondent try to flee away from the spot after seeing the police personnel and they did not try to attack any of them which shows that criminal intention of their part is lacking in the present case for commission of offence mens rea has to be established to prove any criminal act but same is lacking.

7. After evaluating the entire evidence, the trial Court recorded finding that preparation for dacoity or assembling for the said offence is not proved in the present case.
8. After going through the record, it is not a case where interference of this Court is required with the judgment of the trial Court. It is also not a case where respondents should be called for hearing again for full consideration of this petition.
9. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge