

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No. 253 of 2013**

- State of Chhattisgarh Through the District Magistrate District Raipur (CG)

---- Petitioner**Versus**

Nitin Tiwari, S/o. Nutan Prasad Tiwari, Aged 31 years, R/o. Priyadarshani Nagar, D/16 Opposite Niraj Industries, PS Rajendra Nagar, Distt. Raipur (CG)

---Respondent

For Petitioner	: Shri Jitendra Pali, Dy. Advocate General
For Respondent	: None present

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****27.01.2021.**

1. This application for leave to appeal under Section 378(4) of the Code of Criminal Procedure, 1973 has been filed against the order of acquittal dated 30.10.2012 passed by Judicial Magistrate First Class, Raipur in Criminal Case No.377/2011 whereby the said Court acquitted the respondent for the charges under Sections 279 and 338 of the Indian Penal Code.

2. Learned counsel for the State/petitioner submits that it is a fit case to grant leave to appeal against the order of acquittal as the respondent has been acquitted for want of evidence, by recording a finding which is perverse to the record, therefore, opportunity of hearing and adducing evidence may be granted.

3. I have heard learned counsel for the petitioner/State and perused the record.

4. The respondent was charge sheeted for the offence punishable

under Sections 279 and 338 of IPC on the ground that on 09.6.2011 by his negligent act, the respondent dashed into the motor cycle of complainant causing him injuries and fracture on his left leg. On careful perusal of the record, it is evident that reasonable opportunity has been granted to the prosecution to lead evidence as the case was adjourned for ten times for presence of the witnesses. It is true that on 05.9.2012 prosecution witnesses Shri Ghanshyam Prasad and Shri Girish Prasad Mishra were present but they were not examined as the defence side had prayed for adjournment. Thereafter on 10.10.2012 bailable warrants were directed to be issued but the same were returned unserved. Thereafter, the learned Magistrate closed the case finally for want of evidence on behalf of the prosecution. In the considered opinion of this Court, closure of opportunity to the prosecution by the learned Magistrate is in accordance with law as number of time has been granted to the prosecution to produce their witnesses, but the prosecution failed to produce their witnesses despite issuance of summons and bailable warrants by the concerned Court, as such, the learned Magistrate is justified in closing the opportunity of the prosecution thereby acquitting the respondent for want of evidence. I do not find any merit in the application for leave to appeal.

5. Accordingly, instant CrMP is dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE