

(2019) 02 CHH CK 0266

Chhattisgarh High Court

Case No: Criminal Misc. Petition No. 45 Of 2019

State Of Chhattisgarh

APPELLANT

Vs

Gurumukh Singh @ Iddu And
Ors

RESPONDENT

Date of Decision: Feb. 18, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 195, 378(3)
- Indian Penal Code, 1860 - Section 188
- Chhattisgarh Rajya Suraksha Adhiniyam, 1990 - Section 5, 14, 15

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Ravish Verma

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

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.