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(2018) 07 CHH CK 0325

Chhattisgarh High Court

Case No: Criminal Miscellaneous Petition (CRMP) No. 777 Of 2017

State Of Chhattisgarh — APPELLANT

Vs

Kailash Das Manikpuri And Ors — RESPONDENT

Date of Decision: July 26, 2018

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 294, 323, 506

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Ashish Shukla, Pritha Ghoshal

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J

1. Heard on application for leave to appeal.

2. The present leave to appeal has been filed against the acquittal order dated 10.06.2016, passed in Criminal Case No.225/2012 by the JMFC, Raipur,

whereby the respondents have been acquitted under Sections 294, 506 & 323/34 IPC.

3. As per the prosecution case on 11.10.2007 at about 22.45 at Sanjay Nagar, the complainant Rashim Khan was abused & assaulted and threat was

also extended. Thereafter on the report of Rashim Khan, the investigation was conducted and eventually the charge-sheet was filed under Sections

294, 506, 323/34 IPC. Thereafter, during the course of trial, the prosecution failed to bring the witnesses despite the several opportunities granted and

it was also reported that the witnesses are not traceable. Eventually, the Court below closed the evidence and acquitted the respondents.

4. Learned State counsel submits that the order impugned of acquittal suffers from illegality and requires to be set aside by allowing the leave to

appeal. He further submits that the delay of 279 days in filing the appeal has occurred and the reasons so assigned for the delay are genuine,

therefore, the delay in filing the CRMP be condoned and leave to appeal be allowed.

5. Per contra, learned counsel for the respondents vehemently opposed the same and submits that there is no sufficient reason has been assigned to

condone the delay and cursorily the normal reasons have been assigned. She further submits that the order-sheet of the Court below would show that

despite several opportunities granted, the prosecution failed to produce the witness and the witnesses were also not traceable according to the record.

Consequently, neither the sufficient reasons have been shown to condone the delay, nor anything holds in the merit so as to consider the submission of

the State and the order of acquittal is well merited which do not call for any interference.

6. Perused the record of the Court below. The proposed appeal is delayed by 279 days, reasons in the application to condone the delay is stated that

the acquittal order is dated 10.06.2016 thereafter on 28.01.2017, the Law and Legislative Department has sent a memo to the Advocate General

Office to file the acquittal appeal, thereafter, the appeal was being marked to the Law Officers on 07.02.2017 and eventually and lastly on 14.06.2017

the appeal was filed. Therefore, what was the reason of delay in sending the proposal of appeal for six months by the Law & Legislative Department

is also not clear. Further as has been stated on 07.02.2017 though the case was allocated to some of the law officers, but they failed to file the same

with due diligence within a specified time, eventually on 14.06.2017, the appeal was filed. Primarily, therefore, it appears that no sufficient reasons

have been assigned to condone the delay to show that the delay was bonafide. Furthermore, the perusal of the record of the Court below would show

that the case was fixed for evidence on 11.04.2016, thereafter, on five consecutive dates, the prosecution failed to produce the witnesses. The last

report also shows that the witnesses to the summon were not traceable. In view of this, the Court below closed the right of evidence of the

prosecution and acquitted the respondents.

7. Taking into the facts in totality, the ground of delay as on the merit, I do not find any reason to re-appreciate the facts as no sufficient reason has

been assigned. Furthermore, it appears that despite several opportunity granted, the State has failed to produce any witness. Consequently, the

application for condonation of delay in filing the CRMP is dismissed along with the application for leave to appeal.