

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 840 of 2015**

- State of Chhattisgarh through the Station House Officer, Police Station Chando, District Balrampur- Ramanujganj, Chhattisgarh

---- Applicant**Versus**

- Tuneshwar Ram Nagesiya S/o Late Beegan Ram Nagesiya aged about 47 Years R/o Madwa, Police Station Chando, District Balrampur - Ramanujganj Chhattisgarh

---- Respondent

For applicant
For Respondent

: Ms. Shobha Kashyap, Dy. GA
: Not noticed

Judgment**18/09/2015**

1. Heard on I.A. No. 1/15 for condonation of delay in filing the CRMP as the same is preferred after 32 days of its limitation.
2. On due consideration of the reasons mentioned in the application, I.A. no. 1/15 is allowed. Delay in filing the CRMP is hereby condoned.
3. Heard on instant CRMP filed under sub-section (3) of Section 378 of Code of Criminal Procedure, 1973 (in brevity 'Code') for leave to appeal followed by acquittal appeal under sub-section (1) of Section 378 of the Code.
4. Brief facts of the case are that learned Additional Sessions Judge, Ramanujganj in S.T. No. 17/2012 vide judgment dated 2-5-2015 acquitted the respondent for the offence under Section 368 of the Indian Penal Code. The appellant was charged for wrongfully concealing or keeping in confinement, kidnapped or abducted person. The trial Court acquitted the respondent as it is not proved that on the date of incident, the prosecutrix was minor is not proved. Prosecutrix herself denied other part of prosecution story regarding kidnap or abduction and deposed that she was not kidnapped or abducted. She is wife of Kunwarsai, son of respondent. Learned trial Court held that the age of the prosecutrix to be minor on the date of incident is not

proved, prosecutrix herself not deposed anything against the respondent regarding wrongful concealment or keeping her in confinement, also denied the factum of kidnap or abduction and the charges are not proved against the respondent.

5. For the purpose of leave to appeal, heard learned counsel for the applicant and perused the impugned judgment, evidence deposed before the trial Court, charge sheet and statements of the prosecution witnesses examined before the trial Court.
6. Learned counsel for the applicant submitted that judgment of the trial Court is illegal, improper and incorrect hence liable to be set aside. Trial Court erred in holding that age of the prosecutrix was not proved and there is no other evidence against the respondent. The trial Court erred in not appreciating the evidence of other witnesses which proves the offence against the respondent that he voluntarily kept the prosecutrix under concealment wrongfully knowing well that she has been kidnapped or abducted by his son Kunwarsai. Hence it is prayed that as there are sufficient evidence for leave to appeal, leave to appeal be granted. Appeal be admitted for hearing and judgment passed by the trial Court be set aside and the respondent be suitably punished.
7. A close scrutiny of evidence goes to show that prosecutrix P.W. 1 (name not mentioned) has not supported the entire prosecution story and turned hostile. With permission of the Court, prosecution asked leading question but she has not supported the prosecution story and further submitted that about 4 years back she married to Kunwarsai and at the time of her evidence, she had a male child born out of the wedlock and the same was aged about 1 years and 3 months. P.W. 2 Surendra Singh, father of the prosecutrix also not supported prosecution story of kidnap or abduction, also not supported the seizure of article 'A'. The school certificate also did not say anything regarding date, month and year of birth of the prosecutrix. Other witnesses adduced by the prosecution turned hostile. No witnesses is examined to support article 'A' regarding any entry before school records to prove age of the prosecutrix thereby in the present case, prosecution has failed to prove the age of prosecutrix that at the time

of incident she was minor. Also as the prosecutrix and her father not supported the prosecution story, it may not be held that prosecutrix was ever kidnapped or abducted. Considering the over all evidence, the trial Court acquitted the respondent, father of Kunwarsai.

8. On due consideration, I do not see any reason for grant of leave to appeal as the prosecution failed to prima facie make out a case against the respondent. The judgment of the trial court is well founded on facts and also on law.
9. Since the appellant failed to demonstrate prima facie facts for grant of leave, the prayer for grant of leave of the applicant is hereby rejected. Also the acquittal appeal preferred by the applicant is dismissed being not maintainable.

Sd/-
Chandra Bhushan Bajpai
Judge