

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. NO. 865 OF 2015

State of Chhattisgarh, through Station House Officer, Police Station Kunkuri, District Jashpur (C.G.)

... Applicant

Versus

Rahul Atul Kumar Gupta, S/o Kapil Prasad Gupta, age 22 years, occupation- Student, R/o Village Bilaspur, Post- Basantala, Police Station- Narayanpur, District- Jashpur (C.G.)

... Respondent

For Applicant : Mr. Vinod Deshmukh, Deputy Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

15/12/2015

1. The present application has been filed for leave to appeal challenging acquittal of the Respondent, dated 21.10.2014 of the charge under Sections 376(2)(g), 292 IPC, Section 67 (B) of the Information Technology Act, Section 6 of the Mahilaon Ka Ashishtrupan (Pratishedh) Adhiniyam and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, as ordered by the Special Judge (Atrocities Act), Jashpur, in Special Sessions Case No. 21 of 2014.

2. Learned Counsel for the State submits that the statement of the Prosecutrix in a case of present nature carries great weight. The Trial Court could not have ignored it by coming to the conclusion that it was a consensual physical relationship without appreciating that the consent was given because of false promise of marriage held out by the

Respondent. Circulation of MMS with regard to the Prosecutrix was not in dispute.

3. We have considered the submissions and found the appeal to be wholly frivolous.

4. The Prosecutrix and the Respondent were studying together in Loyola College. They developed intimacy from that time and physical relationship continued between them for 3-4 years while they completed their studies and the prosecutrix became a teacher in Nirmala High School. Surely, if she was pursuing the vocation of a teacher having the responsibility to impart knowledge of the good and bad, permissible and impermissible to students, she very well knew of the relationship that she had voluntarily established with the Respondent and on his request prepared an MMS clip of herself and forwarded to him. We therefore find no reason to interfere with the acquittal of the charge under Section 376(2)(g) IPC.

5. We are further satisfied with the observations of the Learned Trial Judge that despite seizure of the mobile chip from the mobile of a witness Sandeep Kujur, marked Exhibit P-11, the investigation carried out by the police to even trace the transfer of the MMS from one mobile to another much less a copy of the same when the Prosecutrix herself had prepared the MMS and deleted it from her own mobile, was severely wanting, and rightly opined it to be a very serious lapse of forensic investigation by the police.

6. We would have been more appreciative if the State had opted to learn from its mistake and made the present prosecution a case study for scientific methodology of investigation, including electronic evidence with regard to Cyber crime. We do hope that the Director General of

Police will look into the matter and take necessary steps for training of the police.

7. Let a copy of this order be sent to the Director General of Police, Chhattisgarh.

8. The application for leave to appeal is dismissed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

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