

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1047 of 2016**

- Ku. Pallavi D/o Shri Parth Singh Chandel, aged about 26 years, R/o Kodabhath, P.S. pamgarh, District Janjgir-Champa (C.G.).

---- Applicant**Versus**

1. State of Chhattisgarh, Through Station House Officer, Police Station – Pamgarh, District Janjgir-Champa, C.G.
2. Kuldeep Singh S/o Harnam Singh Kachhwaha, aged about 27 years, R/o Kodabhath, Police Station Pamgarh, District Janjgir-Champa (C.G.)

---- Respondents

For Applicant.	-	Ms. Nirupama Bajpai, Advocate.
For Respondent No.1	-	Shri Adhiraj Surana, Dy. Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****Judgment On Board****Per Pritinker Diwaker, J****20/10/2016**

Present petition has been filed by the applicant Prosecutrix assailing the judgment and order dated 11.08.2016 passed by Additional Sessions Judge (F.T.C.), Janjgir, District Janjgir-Champa in Sessions Trial No.09/2016 acquitting the accused/respondent No.2 of the charges under Sections 376 and 417 IPC.

02. Brief facts of the case are that on 04.12.2015 F.I.R. (Ex.P/4) was registered against the accused/respondent No.2 under Section 376 IPC on the basis of written report lodged by the Prosecutrix (PW/7) aged about 26 years alleging in it that she knew the

accused/respondent No.2 since when she was studying in class 10 and 11. In the year 2007, accused/respondent No.2 called her in his house and had physical relation with her on the pretext of marriage. It has been further alleged that their relation continued from 2007 to 2013 and during this period accused/respondent No.2 also used to call her at Bilaspur where he was residing in a room. Even the accused/respondent No.2 used to visit her friend's house and there also they had physical relation. According to the Prosecutrix (PW/7), she became pregnant in the year 2009 out of this relation, which was aborted by accused by administering medicine and since then they were taking precaution to avoid the pregnancy. It has been also alleged that she had been exploited for more than five years by the accused saying that he would marry her in the year 2013. She waited for the marriage with the accused but ultimately he stopped talking with her and, therefore, she lodged the report.

03. After investigation, charge sheet was filed against the accused/respondent No.2 under Sections 376 and 417 IPC and accordingly charges were framed against him by the trial Court.

04. So as to hold the accused/respondent No.2 guilty, the prosecution examined as many as 15 witnesses. Statement of the accused/respondent No.2 was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent No.2 of all charges as mentioned in para-1 of this judgment. Hence, this petition.

06. Learned counsel for the applicant prosecutrix submits that the prosecutrix was subjected to forcible sexual intercourse by the accused/respondent No.2 from 2007 to 2013 on the pretext of marriage. It has been further argued that even if the medical report of the prosecutrix does not support the prosecution case and there is delay in lodging the report, the Court below ought to have convicted the accused/respondent No.2.

07. State counsel has duly assisted the Court.

08. We have heard learned counsel for the parties and perused the material available on record.

09. From the statement of the Prosecutrix (PW/7) and written report (Ex.P/3), it is apparent that in the year 2007 accused/respondent No.2 called the prosecutrix to his house and had physical relation with her on the pretext of marriage and this process continued till 2013. During this period, accused/respondent No.2 had also physical relation with her in Bilaspur where he was residing in a room and in prosecutrix friend's house at Champa where she was taking training of A.N.M. Contents of written report (Ex.P/3) and her evidence clearly reveal the fact that prosecutrix went on to allow the accused/respondent No.2 to have physical relation with her for such a long span of time and as such she was a consenting party to the act of the accused.

10. Considering the statement of the Prosecutrix (PW/7) and the evidence adduced by the prosecution, it is apparent that by no stretch of imagination alleged act of the accused/respondent No.2 comes within the ambit of Section 376 IPC. The trial Court, after considering the evidence of Prosecutrix (PW/7), came to the conclusion that she was a major lady and a consenting party. After due appreciation of the

evidence available on record, the trial Court has acquitted the accused/respondent No.2 of the charges under Sections 376 and 417 IPC & the view taken by the trial Court is of the possible views. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the Court should not disturb the finding of acquittal recorded by the trial Court, also comes to the rescue of the respondent/accused bolstering the presumption that he is innocent.

11. Accordingly, the CRMP preferred by the applicant prosecutrix is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.

Sd/-

(Pritinker Diwaker)

JUDGE

Sd/-

(R.C.S. Samant)

JUDGE