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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 154 of 2016**

State of Chhattisgarh, Through District Magistrate, District Bilaspur
(Chhattisgarh)

---- Appellant**Versus**

Deepak Agnihotri @ Pinku, aged about 28 years, S/o Late Devendra Kumar Agnihotri, Permanent Address village Duari, P.S. Gud, District Reewa (MP)
Present Address Ravinagar, Pouradhar, Qutr. No. MQ/188, PS Ramnagar,
District Anuppur, Madhya Pradesh.

---- Respondent

For Appellant : Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Order on Board****Per Navin Sinha, Chief Justice****03/02/2016**

1. The State assails acquittal of Respondent from the charges under Section 376 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called 'the Act') by the Special Judge (Atrocities) Bilaspur, dated 2.11.2015 in Special Sessions Case No. 20 of 2014.
2. Learned Counsel for the State submits that if the parties were married on 13.6.2008, the conduct of the Respondent in denying the marriage in 2012 naturally makes the physical relations established by him in 2008 on a false promise of marriage an offence under Section 376 IPC. It was next submitted that the prosecutrix had stated that in 2012, when she wanted to live with the Respondent, he denied having married her, abused her by her caste status declining to recognize her as his wife. The victim in her statement under Section 164 CrPC had supported the allegations also. In cases of the present nature, the

evidence of the prosecutrix was sufficient proof of her having been sexually abused and acquittal was therefore not justified.

3. We have considered the submissions.

4. The prosecutrix was not an illiterate rural ignorant woman. She was an educated and enlightened woman possessing a Post Graduate Degree in Micro-Biology aged about 26 years. The prosecutrix acknowledged that she met the Respondent while pursuing her MSc studies way back in the year 2008. Gradually, love and affection developed between them and they started meeting regularly. The Respondent was well aware of her caste status and still fell in love with her and took her to the Mahamaya Temple, Ratanpur and married her. Thereafter, they lived at times in a room belonging to friends and even travelled to Bhopal where physical relations were established between them. The level of love and affection between them is exhibited by the fact that when the Respondent's father fell ill, she even gave him a loan of Rs. 50,000/- for treatment but after he secured employment on compassionate grounds consequent to the death of his father, his attitude changed.

5. The prosecutrix also acknowledges that physical relations were established between them for the first time at Trilanka Colony in Bhopal to which she did not object. They lived together for six-seven months in Bhopal where physical relations were regularly established. In this manner, physical relations were established between them continuously for six long years. After the death of his father in 2013, the Respondent told the prosecutrix that he would not marry her because she belongs to a low caste and threw her out of the house.

6. The Trial Judge concluded that the prosecutrix was acknowledging that till December, 2012, she was living with the Respondent as husband and wife consequent to a marriage performed between them out of love and affection and that they travelled from one place to another. That the prosecutrix was an

educated women possessing a Post Graduate degree fully aware of the nature of her acts and she has to take responsibility for the same herself. Evidently the prosecutrix had more than sufficient opportunity to resist which she knowingly did not do.

7. If the Respondent had married the prosecutrix in 2008 and for one reason or the other was declining to accept his marital obligations and granting her the marital rights, nothing prevented the prosecutrix from pursuing her remedies under the marriage laws applicable to the parties. To allege a criminal offence in the manner done at such a late stage obviously left the Trial Judge satisfied that it was not a bonafide claim. We find no reason to come to a different conclusion.

8. To invoke the provisions of the Act, it was for the prosecution to establish that the Respondent was in a position to dominate the will of the prosecutrix because she belonged to Scheduled Caste and because of the dominating position exploited her successfully to which she would have otherwise not agreed. This was required to be established by the prosecution as commencing from the year 2008 itself and travelling across till the institution of the prosecution in 2013. There is no evidence whatsoever in this regard. We are not satisfied that the consenting physical relationship between two adults can so easily be given a colour of an offence under Section 376 IPC, in the facts of the present case.

9. We find no merit in this application and dismiss the same.

10. Before parting with this case, we may only refer to our order dated 28.1.2016 in Cr.M.P. No. 122 of 2016 (State of Chhattisgarh v. Devbal Ghasi) where leave to appeal in a similar case was sought compelling us to observe as follows:

"8. Before we part with the case, we consider it appropriate to observe that an appeal against an acquittal is a serious matter not to be treated casually. An allegation of sexual abuse under

Section 376 IPC casts serious aspersions on the character of the person made accused and affects his reputation. An acquittal may not necessary be sufficient to resurrect a tarnished reputation. A private litigant pursuing the matter disputing an order of acquittal is a different matter and will have to be dealt with appropriately under the provisions of the Code of Criminal Procedure and if circumstances so warrant by invoking the appropriate provisions of the Code regarding false implication and malicious prosecution. The State undoubtedly is the guardian of public interest and has a bounden duty to prefer appeals in cases of acquittal where it is considered prudent to do so in the larger public interest. But the State also has a duty to be more circumspect in preferring appeals after proper examination of orders of acquittal. We are not satisfied that the circumspection required by the State in preferring the present application was duly followed, burdening this Court unnecessarily. We expect the State to be more circumspect in filing acquittal appeals before this Court. Our observations cannot be construed and need not to be considered as any restraint on the discretion of the State to prefer criminal appeals. All we say is that it requires a more cautious approach with due application of mind in the facts of each case."

11. The present is yet another case of similar nature. We do expect the State to consider matters appropriately in light of the observations made by us.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE