

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1075 of 2016**

- Ajay Kumar Thakur S/o Chandradip Thakur Aged About 25 Years R/o Village Aadarsh Nagar, Police Station Barwadih, District Latehar, Jharkhand.

---- Applicant**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Ambikapur, District Surguja, Chhattisgarh. (Wrongly Police Station Mention As Uyapur).

---- Non-applicant

For Applicant

Mr. A.K. Shukla, Advocate

For Non-applicant/State

Mr. Ashok Swarnkar, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****21.12.2016**

1. The present Revision Petition has been filed assailing the order dated 09.08.2016 passed by the Additional Sessions Judge (FTC), Ambikapur in S.T. No. 22/2016 whereby the two applications moved by the Applicant seeking for inquiry to be conducted for determination of age of the Prosecutrix in the instant case have been rejected.
2. The present Applicant was made accused in Crime No. 335/2014 registered as Police Station Ambikapur for the offence punishable under Sections 376(Dh) and 368 of the IPC and also under Sections 4, 5(th), 6 and 17 of the POCSO Act. The FIR in the instant case was lodged on 14.07.2014 and the Applicant was arrested on 16.03.2016. The matter in between after investigation was put to trial before the Additional Sessions Judge (FTC), Ambikapur wherein the case was registered as

S.T. No.22/2016. The matter now has reached to the stage of argument before charge. At this juncture two applications were filed by the present Applicant; one dated 03.08.2016 and other dated 15.07.2016. Both these applications have been made seeking for direction to the prosecution to inquire into the actual age of the Prosecutrix and also a prayer was made for constitution of medical board to determine the age of the Prosecutrix. Both the applications have been rejected by the Court below vide order dated 09.08.2016 i.e. the impugned order holding that in the course of investigation the prosecution has been able to acquire Dakhil Kharij Register regarding the proof of date of birth of the Prosecutrix. Therefore, at the stage of argument before charge the two applications moved by the Applicant was not maintainable and therefore the same was rejected.

3. Learned Counsel for the Applicant submits that it is a case where the Prosecutrix had voluntarily gone to meet the Applicant and it is a case of consensual relationship between the parties. The Prosecutrix is a major girl and the prosecution ought to have determined the age of the Prosecutrix first before proceeding further with the trial. Therefore, prayed for the quashing of the said order and for appropriate order.
4. Learned State Counsel however opposing the Petition submits that it is a case where prosecution has acquired certain documents to establish the age of the Prosecutrix and in case if the Applicant feels the said evidence is inadequate and not proper he would get all the opportunities in defence to disapprove the same by leading cogent evidence and also by cross-examining the prosecution witnesses in this regard.

5. Having considered the rival contention put forth on either side and perusal of the records what is reflected from the preceding paragraph that the FIR in the instant case was lodged on 14.07.2014 and the Applicant in the instant case was arrested after about 2 years time i.e. on 16.03.2016. Now the matter having been put to trial before charge can be framed, the two applications have been filed by the Applicant calling for direction to determine the age of the Prosecutrix.
6. In the opinion of this Court, the two applications at this juncture is totally misconceived as it is the duty of the prosecution to establish the actual age of the Prosecutrix when the prosecution is claiming the Prosecutrix to be minor and unless the prosecution leads cogent and sufficient evidence to show that she is minor, the case of the prosecution would not stand in the eye of law. The Applicant in the instant case, the accused person would get all the opportunities to lead proper evidence in defence and also would get all the opportunities of cross examining the witnesses particularly in respect of the age of the Prosecutrix and disapproving the stand of the prosecution so far as the age is concerned.
7. Thus, this Court is of the opinion that the Court below has not committed any infirmity or illegality while rejecting the said applications.
8. With the aforesaid observations the present Revision Petition being devoid of merits stands dismissed.

Sd/-
(P. Sam Koshy)
JUDGE