

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 768 of 2016**

- Lalima Bharti, D/o Shri Laxman Bharti, Age – 22 years, R/o Village Podagudapara, Behind School, District Bastar, C.G.

---- Applicant**Versus**

1. Sonuram Baghel, S/o Late Jhaduram Baghel, age 25 years, R/o Ghatpadmur, Thana Frezerpur, District Bastar, C.G.
2. State of Chhattisgarh, Through the District Magistrate, Jagdalpur, District Bastar, C.G.

---- Respondents

For Applicant.	-	Shri Alok Kumar Dewangan, Advocate.
For Respondent No.2	-	Shri Arvind Dubey, Panel Lawyer.

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 under Section 378(3) of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 31.01.2016 passed by Additional Sessions Judge (F.T.C.) Bastar at Jagdalpur in C.I.S.No. 81/2015 acquitting the accused/respondent No.1 of the charge under Section 376 IPC.

02. Brief facts of the case are that on 20.07.2015 written report (Ex.P/1) was lodged by the Prosecutrix (PW/1) aged about 25 years alleging in it that since June 2013 she was being subjected to physical relation by the accused/respondent No.1 herein on the assurance of

marriage.

03. After investigation, charge sheet was filed against the accused/respondent No.1 under Section 376 IPC and accordingly charge was framed against him by the trial Court.

04. So as to hold the accused/respondent No.1 guilty, the prosecution examined as many as 10 witnesses. Statement of the accused/respondent No.1 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.1 as mentioned in para-1 of this judgment. Hence, this petition.

06. Learned counsel for the applicant prosecutrix submits that for the first time the prosecutrix was subjected to forcible sexual intercourse in the year 2013 and thereafter accused/respondent No.1 continued to have physical relation with her 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.1.

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/1), it is apparent that for the first time she was not being subjected to sexual intercourse by the accused/respondent No.1 on the ground of marriage. Later, according to her statement, the accused/respondent No.1 came to her

house, demanded water and then committed forcible sexual intercourse. This witness has further admitted that in the village meeting dated 25.06.2013 accused had accepted her as his wife, however, thereafter she was being continuously subjected to cruelty by him. Thereafter, she again gave several opportunities to the accused to rectify his mistake but accused failed in changing his behaviour and told her to leave his house.

10. Considering the statement of the Prosecutrix (PW/1) and the evidence adduced by the prosecution, it is apparent that by no stretch of imagination alleged act of the accused/respondent No.1 comes within the ambit of Section 376 IPC. After due appreciation of the evidence available on record, the trial Court has acquitted the accused/respondent No.1 and the view taken by the trial Court is one 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