

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 823 of 2016

Ku. Ratna Khunte D/o. Moti Lal Khunte, aged about 18 years, R/o. Temar, Police Station Sakti, Civil & Revenue District Janjgir – Champa, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh through Police Station A.J.A.K. Janjgir, District Janjgir – Champa, Chhattisgarh
2. Suresh Kumar Thawait S/o Late Shriram Thawait, aged about 45 years, Occupation Government Service, R/o. Ward No. 9, Champa, Police Station Champa, District Janjgir – Champa, Chhattisgarh, present address - Community Health Center, Sakti, Police Station Sakti, District Janjgir – Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Govind Dewangan, Advocate.
For Respondent-State	:	Mr. Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/10/2016

1. The present CrMP has been preferred seeking for grant of leave to appeal against the judgment of acquittal dated 06.04.2016 passed by the Special Sessions Judge, Janjgir-Champa in Special Sessions Case No. 200/2015.
2. Brief facts of the case are that the petitioner had gone to the Community Health Center, Shakti for getting her eyes checked up and she had met with respondent no.2, the Assistant Optician. It is alleged that during the course of testing her eyes, respondent no.2 tried to outrage her modesty. Though the incident took place on 05.09.2015 but she did not lodge a complaint on the same day nor did she report to anybody for fear of getting defamed in the society. Ultimately, on the next day i.e. 06.09.2015

she gathered strength and informed her parents. Thereafter, they went to the police station but the Police Authorities asked them to make a written report. Then they went to the office of a lawyer and got a report Ex. P-1 prepared. Based on the said report, the Police Authorities conducted an investigation and put the matter before the Court of Special Sessions Judge, Janjgir-Champa which was registered as special Sessions Case No. 200/2015.

3. During the course of trial 7 witnesses were examined on behalf of the prosecution and no defence witness has been examined. After conclusion of the trial, the Court below vide its judgment dated 06.04.2016 acquitted the respondent no.2 holding that the prosecution has not been able to prove the case beyond reasonable doubt.

4. It is this judgment of acquittal dated 06.04.2016 which the petitioner intends to assail by seeking leave to appeal.

5. Counsel for the petitioner submits that the Court below has committed an error of law in not appreciating the evidence of the victim PW-1. The Court below has not appreciated the fact that the victim has categorically narrated the entire incident before the Court and has substantiated the report which she had initially lodged against the accused. According to the counsel for the petitioner, there was no infirmity or discrepancy whatsoever in the complaint as well as the statement which has been made by the victim against respondent no.2. As such the case of the prosecution stands proved against respondent no.2 and he ought to have been held guilty for the offence under Section 354 A of IPC. According to the counsel for the petitioner, the Court below has not appreciated the fact that the respondent no.2 has not been able to bring any good reason or plausible explanation for the complainant to have lodged a false complaint against the respondent no.2. In the absence of any such suggestion on the part of respondent no.2, the inference has to be drawn in favour of the complainant/victim. Counsel

for the petitioner further submits that admittedly the complainant/victim belongs to a member of scheduled caste category and respondent no.2 was not of the said category and therefore the offence under Section 3 (1) (xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "the SC ST Act") would have come into play and he should have been held guilty for the said offence. Counsel for the petitioner referring to the statement of the victim recorded under Section 161 CrPC as well as the Court statement submits that the averments made by the victim before the Court below is exactly the same what she had made in her previous statement made during the course of investigation. Thus, there was no good reason for not holding respondent no.2 guilty of having committed the alleged offence and prayed for reversal of the finding of the trial Court.

6. However, State counsel opposing the petition submits that the order passed by the Court below is a well reasoned order. He further submits that the Court below found that there were much contradictions in the Statement of the complainant made at different stages and therefore, the contents of the complaint and the averments made by the complainant is hard to believe. Thus, the judgment of acquittal does not warrant any interference.

7. Having considered the rival contentions put forth by the counsel on either side and on perusal of the record what is admitted and undisputed fact is that the petitioner had visited the Community Health Center, Sakti for the first time and that she was not known to respondent no.2 before that. It is also an undisputed fact that respondent no.2 was not aware of the actual category to which the petitioner belongs. In the absence of any knowledge on the part of respondent no.2 in respect of the category of the petitioner, the offence under Section 3 (1) (xi) of the SC ST Act could not have been made out and the Court below has rightly held that the offence under Section 3 (1) (xi) of SC ST Act is not established or proved by the prosecution and has rightly acquitted respondent no.2 from the said charge.

8. So far as the offence under Section 354A of IPC is concerned, if we take into consideration the original complaint made by the petitioner in writing i.e. Ex.P-1 to the Police Authorities on 06.09.2015, it would clearly reflect that in the said complaint the petitioner had referred to initiate criminal proceeding against one doctor Abhishek not against the respondent no.2 Suresh Kumar Thawait. Another fact is that he is not a qualified doctor. This itself creates doubt in the mind of the Court in the prosecution Story. In her Court statement the petitioner has stated about the respondent no.2 of having given two injections on either side below her waist and subsequently in an indecent manner having rubbed those areas where he had injected the needle. However, this fact is missing from the complaint made by the petitioner before the Police on 06.09.2015 Ex. P-1.

9. It is hard to believe that a girl who is a student of the first year B.Sc. would permit a person to apply two injections both sides below her waist when she had gone to the health center for getting her eyes tested. It is very difficult to believe the fact that the respondent no.2 would have acted in an indecent manner and would have also tried to outrage modesty of the petitioner in the hospital where many other patients were also available there as is evident from her evidence and yet she would not make a hue and cry against the respondent no.2 for his alleged criminal act of outraging modesty. Another fact which is hard to believe is that when on the same day she had gone to the police authorities, why the police authorities would refuse to register a complaint against respondent no.2 for such a serious offence and would insist the victim to give a complaint in writing. Further in cross-examination, the victim herself in paragraph-5 admits the fact that when she was being subjected to examination by respondent no.2, there were lot of patients around respondent no.2 available there. It is also hard to believe that in the presence of so many persons the respondent no.2 would try to outrage the modesty of the petitioner in the garb of examining her medically.

These are some of the doubts which have crept up in the mind of the Court below at the time of appreciation of the evidences and it is settled position of law that whenever there is a slightest of doubt in the prosecution story, the benefit of which would go in favour of the accused.

10. In the instant case also if the Court below accepting those doubts has granted an order of acquittal to respondent no.2, the same cannot be said to be bad in law, arbitrary and contrary to the evidence on record.

11. Thus, this Court is of the opinion that no strong case is made out by the petitioner for grant of leave to appeal against the judgment of acquittal dated 06.04.2016. Accordingly, the present CrMP stands dismissed.

Sd/-
(P. Sam Koshy)
Judge