

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 1310 OF 2016

State of Chhattisgarh, through District Magistrate, Korba (C.G.)

... Petitioner

Versus

1. Idrish Khan, S/o Hadis Khan, aged about 46 years.
2. Smt. Aliman Begam, W/o Idrish Khan, aged about 42 years.
3. Rustam Alam, S/o Idrish Khan, aged about 21 years.

All are R/o Village Khanpur, Police Station Dehni, District Chhapra (Bihar), presently R/o 15 Block, Jharnapara Chowki, CSEB, District Korba (C.G.)

... Respondents

For Petitioner-State

:

Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/02/2017

1. The present petition has been filed for grant of leave to appeal under Section 378(3) of the Code of Criminal Procedure, 1973, ('CrPC' in short) assailing the judgment dated 4.7.2015 passed by the Additional Sessions Judge (F.T.C.), Korba, in Special Sessions Case No. 21 of 2014.

2. Case of the Prosecution in brief is that, on 25.2.2014, Respondent No.3 is said to have tried to outrage the modesty of the victim (PW-2) and also assaulted her and used abusive language against her while she was going to school. Later on, in the evening of the said date, i.e., 25.2.2014, the Respondents No. 1 and 2 also is said to have entered into the house of the victim and used abusive language and also assaulted her. An FIR was registered in this regard at Police Station Kotwali, District Korba, as Crime No. 98 of 2014. Later on, the matter was put to trial before the Court of Additional Sessions Judge (F.T.C.), Korba, where the case was registered as Special Sessions Case No. 21 of 2014. The Respondents No. 1 and 2 were prosecuted for the offence punishable under Section 452/34, 294/34, 323/34

of the Indian Penal Code ('IPC' in short) and Respondent No.3 was prosecuted for the offence punishable under Section 294, 323, 354(A) of IPC as well as under Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO Act' in short).

3. After conclusion of the trial, vide impugned judgment dated 4.7.2015, the Court below found the Respondents No. 1 and 2 guilty of having committed the offence under Sections 452/34 and 323/34 of IPC as also the Respondent No.3 for the offence under Sections 323/34 and 354(A) of IPC and on convicting them for the said offences they were sentenced to undergo the sentence for the period till the rising of the Court and to pay fine of Rs.1000/- each with default stipulation of two months simple imprisonment in case they fail to deposit the fine amount. So far as the offence under Section 294/34 of IPC is concerned, the Court below found that there was no sufficient evidence to show that the Respondents No. 1 and 2 had used filthy and abusive language against the victim in an open public place, rather it is a case where the incident had occurred inside the house and therefore the said offence would not be made out. Likewise, the finding of the Court below was also that there was no sufficient, cogent evidence adduced by the prosecution with which it could be authoritative concluded that the victim in the instant case was a minor and therefore the Respondent No.3 was also acquitted of the charges under Section 294 of IPC and Section 8 of the POCSO Act.

4. The perusal of the record would prima facie show that the evidence which have been brought on record, have been duly considered by the Court below in reaching to the conclusion that the Respondents No. 1 and 2 are guilty of the offence under Sections 452/34 and 323/34 of IPC and the Respondent No.3 guilty for the offence under Sections 323/34 and 354(A) of IPC. The Court below further considering the nature of allegations as also the over all facts and circumstances of the case, reached to the conclusion that ends of justice would meet if the Respondents are sentenced for the period till

the rising of the Court with payment of fine of Rs.1000/- for each of the offence, with default stipulation in case the fine amount is not deposited.

5. Considering the entire facts and circumstances of the case particularly, the nature of evidence which have come on record, this Court also is of the opinion that no strong case has been made out which calls for the interference with the impugned judgment.

6. In addition, the present petition also is not maintainable, for the reason that it is a petition which has been preferred for grant of leave to appeal under Section 378(3) of CrPC. The said provision of law can be invoked only against a judgment of acquittal. In the instant case, the impugned judgment is not that of an acquittal given to the respondent-accused, whereas it is a case where all the Respondents have been found guilty for the offence and also convicted except for the offence under Section 294 of IPC and Section 8 of the POCSO Act. Thus, it is only against the judgment of acquittal, an appeal under Section 378(3) of CrPC preferred by the State would be maintainable. An appeal against a judgment of conviction is not maintainable under Section 378(3) of the CrPC. Against the inadequacy of the sentence, the procedure for appeal is under Section 377 of CrPC. For this reason also the present petition is not maintainable.

7. Thus, for the foregoing reasons, the present Criminal Misc. Petition for grant of leave to appeal is dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge