

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 935 of 2017**

(Arising out of judgment/order dated 23.08.2017 in Case No. 01/2017 of the learned Additional Session Judge (FTC) Korba)

Pushpendra Vishwakarma S/o Dayaram Vishwakarm, Aged About 19 Years R/o Village Janji, Police Station Seepat, District Bilaspur Chhattisgarh. At Present R/o Village Tonda, Police Station Urga, District Korba Chhattisgarh.

----Applicant

Versus

State Of Chhattisgarh Through The Police Station Urga, District Korba Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Govind Ram Miri Advocate with Mr. Basant Kaiwartya, Advocate
For Respondent	:	Mr. Anil S Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

17.11.2017

- 1) Heard on admission.
- 2) This revision is directed against order dated 23.08.2017 passed by the Additional Sessions Judge (FTC) Korba in Case No. 01/2017, wherein the said Court amended the charge against the applicant/ revisioner and added new two sections in charge i.e. section 376 of the IPC and Section 6 of Protection of Children from Sexual Offences Act 2012.
- 3) As per revisioner the trial Court has not provided proper opportunity of hearing before alteration of the charge and no offence under Section 376 of the IPC and Section 6 of the

Protection of Children from Sexual Offences Act 2012 is made out against the applicant.

- 4) On the other hand, counsel for the State submits that the trial Court is well within its jurisdiction in altering the charge and added said charge on the basis of material placed before it, therefore, the order is not liable to be interfered by this Court invoking the jurisdiction of revision.
- 5) As per record, the date of birth of the prosecutrix is 01.09.1999 and date of offence is 26.07.2015, it means that on the date of offence, age of the prosecutrix was 15 years and 10 months. She was below 16 years. There is prima-facie evidence against the applicant that the applicant committed sexual intercourse with the prosecutrix. As per Section 375 which defined rape and as per section 375(6), A man is said to commit "rape" who has sexual intercourse with a woman with or without her consent, when she is under sixteen years of age.
- 6) In the present case, the age of the prosecutrix is below 16 years, therefore, prima-facie, offence under Section 376(1) of the IPC is made out and the trial Court altered the charge. Again, as per section 2(d) of the POCSO Act, "child" means any person below the age of eighteen years. As per Section 5 (j) (ii) of the POCSO Act- whoever commits penetrative sexual assault on a child, in the case of female child, makes the child pregnant as a consequence of sexual assault is committed aggravated penetrative sexual assault and the same is offence under Section 6 of the said act.

- 7) In the present case, there is prima-facie evidence that the prosecutrix is under 16 years of age and she is child and the applicant makes her pregnant as a consequence of sexual assault and for that the trial Court charged under Section 6 of the said Act. As per Section 216 of the Cr.P.C. any Court may alter or add to any charge at any time before judgment is pronounced.
- 8) In the present case, the trial is on before Special Court and the judgment is yet to be pronounced, in altering the charge, the Special Court is well within its jurisdiction to alter or add the charge as mentioned above. From the order sheet it appears that the trial Court provided opportunity of examine or cross-examine any witnesses who have already been examined or cross-examined after altering the charge. As per provision of Section 216 of the Cr.P.C. there is no illegality or infirmity in the said order warranting any interference by this Court invoking the jurisdiction of the revision.
- 9) For the foregoing, the revision is devoid of substance and the same is dismissed at the motion stage itself. In view of above, I.A. No. 1/2017, application for grant of stay and I.A. No. 2/2017 application for taking documents on record are disposed of.

Sd/-

(Ram Prasanna Sharma)
JUDGE