

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr. M. P. No. 55 of 2018**

State of Chhattisgarh through District Magistrate, Mungeli (CG)

---- Petitioner**Versus**

Lomesh Kumar Sahu S/o Fekuram Sahu, aged about 24 years, resident of village Baigakapa, Police Station Lalpur, district Mungeli (CG)

---- Respondent

For Petitioner/State : Shri Garry Mukhopadhyay, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/01/2018**

The present CrMP has been filed seeking for restoration of earlier CrMP No.1108/2016 which got dismissed on account of a peremptory order passed by this Court on 04.10.2016.

2. Though this Court would have liberally entertained the CrMP seeking for restoration of the case which gets dismissed by a peremptory order, in the present case, this court is not inclined to take a liberal view only on the ground of delay and laches.

3. A plain perusal of the record would show that CrMP No.1108/16 was preferred challenging the judgment of acquittal dated 10.03.2016 passed by the Additional Sessions Judge, Mungeli in Special Sessions Trial No. H 48/2015 where respondent Lomesh Kumar Sahu was prosecuted for the offence under Sections 354, 354-D, 324, 457 of IPC and Section 12 of Protection of Children from Sexual Offences Act, 2012. The said CrMP was listed on default before the Court on 04.10.2016. This Court had granted six

weeks time to the State for removing the default while passing the peremptory order.

4. The contents of the present CrMP which has been filed for restoration of CrMP No.1108/16 would show that the State counsel had cured the default on 24.11.2016 though by that time six weeks' time granted by this Court had already lapsed on 16.11.2016. The best course was to immediately move an application for restoration seeking extension of time for removing the default. The state counsel or the Officer Incharge does not seem to have taken any step in this regard.

5. Vide memo dated 06.12.16, the Government was also intimated about dismissal of CrMP No.1108/16 on account of peremptory order, even then the present CrMP was filed as late as on 23rd December, 2017 i.e. after more than a year from the date the default was cured. No sufficient explanation whatsoever has been given by the State for condoning the delay caused. One cannot lose sight of the fact that the original CrMP was filed challenging an order of acquittal dated 10th March, 2016 i.e. by now almost 22 months have lapsed from the date of judgment of acquittal.

6. In the given facts and circumstances where the respondent himself has been enjoying the judgment of acquittal in his favour for 22 months, it would not be proper at this juncture for condoning the delay without there being any justifiable and plausible explanation for the delay caused. Thus, the present CrMP deserves to be and is accordingly dismissed only on the ground of delay and laches without entering into the merits of the case.

**Sd/-
(P. Sam Koshy)
JUDGE**