

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.205 of 2018**

Sagar Kumar, son of Manoj Kumar Kannojiya, aged about 29 years, resident of Village Baikunthpur, Camp-2, Chhawani, Police Station Chhawani, District Durg, Chhattisgarh

---- **Applicant**

versus

State of Chhattisgarh through the Station House Officer, Police Station Jamul, District Durg, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri Goutam Khetrapal, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

1.3.2018

1. The revision is listed for hearing on admission. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. Initially, the revision was preferred against two orders dated 27.11.2017 and 30.1.2018 passed by the Additional Sessions Judge (Fast Track Court), Durg. Thereafter, the revision, so far as it related to against the order dated 27.11.2017 was withdrawn on 20.2.2018. Now, the instant revision is to be decided against the order dated 30.1.2018 only.
3. A charge-sheet has been preferred against present Applicant Sagar Kumar and two other persons, namely, Sanjay and Umesh under Sections 354, 384 read with Section 34 of the Indian Penal Code and Sections 8, 11(v) and 12 of the Protection of Children from Sexual Offences Act, 2012 (henceforth 'the Act of 2012'). Against the present Applicant, charges were framed under Sections 354, 384/34, 323/34 (two counts) of the Indian Penal Code and Sections 10, 11(ii)(v), 12 of the Act of 2012.
4. The date of incident is 28.11.2016 and as per the prosecution story

and the documents submitted by the prosecution, the date of birth of the prosecutrix is 17.2.1999. An application under Section 216 of the Code of Criminal Procedure has been submitted before the Trial Court stating that the date of birth of the prosecutrix is 17.2.1998. In support of the application, birth certificate issued by Nagar Palika Parishad Bacheli, an another certificate issued by N.M.D.C. Apollo Central Hospital Bacheli and a copy of the birth-death register were submitted in the Trial Court in which the date of birth of the prosecutrix is mentioned as 17.2.1998. It was requested before the Trial Court that the actual date of birth of the prosecutrix is 17.2.1998 and 17.2.1999 has wrongly been entered as her date of birth. Therefore, no case under the Act of 2012 is made out against the present Applicant. The above-mentioned application under Section 216 of the Code of Criminal Procedure was rejected on the ground that what is the actual date of birth of the prosecutrix is a subject matter of evidence. Hence, this revision.

5. Shri Goutam Khetrapal, Learned Counsel appearing for the Applicant submits that there is no conclusive finding of the Trial Court on the date of birth of the prosecutrix. On the basis of the documents filed by the Applicant, the age of the prosecutrix, on the date of incident, was above 18 years. Therefore, it is necessary that what is the actual date of birth of the prosecutrix should be decided at the present stage of the matter by the Trial Court. If after trial it will be established that the age of the prosecutrix was above 18 years on the date of incident, the whole trial would be vitiated.
6. On the other hand, Shri Sameer Behar, Learned Counsel appearing for the State submits that the finding of the Trial Court is

just and proper.

7. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
8. From a bare perusal of the material available, it appears that charge-sheet was filed on 28.1.2017. Prior to that, an application dated 21.12.2016 was submitted before the Station House Officer, Police Station Jamul, District Durg regarding date of birth of the prosecutrix mentioning therein that the actual date of birth of the prosecutrix is 17.2.1998. Though as per the prosecution, the actual date of birth of the prosecutrix is 17.2.1999. A mark-sheet is annexed with the charge-sheet mentioning the date of birth of the prosecutrix as 17.2.1999. With the application under Section 216 of the Code of Criminal Procedure, birth certificate issued by Nagar Palika Parishad Bacheli, the another certificate issued by N.M.D.C. Apollo Central Hospital Bacheli and the copy of birth-death register were submitted before the Trial Court in which the date of birth of the prosecutrix is entered as 17.2.1998. If 17.2.1998 is the correct date of birth of the prosecutrix, in such a circumstance, the Trial Court has no jurisdiction to try the case. In these circumstances, if the Trial Court gives its finding regarding age of the prosecutrix after recording of the evidence and if the Trial Court finds that on the date of incident, the age of the prosecutrix was above 18 years, the whole trial would be vitiated.
9. Therefore, the impugned order dated 30.1.2018 is set aside. The Trial Court is directed to consider the documents annexed with the application under Section 216 of the Code of Criminal Procedure and the Trial Court shall itself make a detailed inquiry or get an inquiry conducted through the Station House Officer of the

concerned police station regarding the actual date of birth of the prosecutrix. After the inquiry is conducted, the Trial Court shall arrive at a finding regarding the actual date of birth of the prosecutrix and shall thereafter pass an appropriate order in accordance with law. In the result, the revision is allowed to the extent indicated above.

- 10.** A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge