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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.415 of 2018**

The State of Chhattisgarh, Through Police Station Basantpur,
Distt. Rajnandgaon

---- **Petitioner****Versus**

1. Pankaj Thakur @ Anis Khan S/o Basant Thakur Aged About 24 Years R/o Indira Nagar Ward No. 41, Present R/o Near Rewadeeh Pond, Police Station Lalbag, District Rajnandgaon Chhattisgarh
2. Amit Vaishnav S/o Udhodas Vaishnav Aged About 22 Years R/o Indira Nagar Ward No. 41, Police Station Basantpur District Rajnandgaon Chhattisgarh
3. Nitin Kumar @ Mukku Nepali Limbu S/o Nirmal Kumar Limbu Aged About 34 Years R/o Gauri Nagar Ward No. 12, Near Power House P. S. Kotwali, District Rajnandgaon Chhattisgarh

---- **Respondents**

For the Petitioner/State : Shri Suryakant Mishra, Panel Lawyer

For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****21.8.2018.**

1. This is an application for grant of leave to appeal under Section 378(3) of CrPC.
2. Leave is sought against judgment of acquittal dated 06.12.2017 passed by Additional Sessions Judge (FTC), Rajnandgaon in Special Criminal Case No.77/2014, wherein the said Court acquitted all the respondents for commission of offence under Sections 341, 354A(i)(ii), 354D, 506 Part-II IPC and under Section 8 of the Protection of Children From Sexual Offences Act, 2012.
3. In the present case, respondents were charge sheeted for commission of offence against prosecutrix (PW-5). In her statement she deposed that date of incident is 02.8.2014 and the incident took place when she was returning from school. It is stated by the prosecutrix that respondent Pankaj Thakur called

her near hospital and gave her a letter, asked her to reply the letter after reading the same. Further submission of the prosecutrix is that respondent Amit Vaishnav threatened her to fall in love with Pankaj and the same is repeated by respondent Nitin Kumar @ Mukku Nepali. Mayank Manikpuri (PW-4) is the brother of the prosecutrix to whom she informed about the incident. In her statement under Section 161 CrPC recorded during investigation she has not stated anything regarding the threatening of respondents Amit Vaishnav and Nitin Kumar. Version of the prosecutrix is exaggerated against respondents Amit Vaishnav and Nitin Kumar and the trial Court has not accepted the same. So far as respondent Pankaj Thakur is concerned, he gave one letter to the prosecutrix. For the commission of offence under Section 354A IPC, physical contact and advances involving unwelcome and explicit sexual overtures or demand or request for sexual favour are essential. Again for commission of offence under Section 354D, which is an offence of stalking repeated personal interaction is essential. In the present case, only one instance of giving letter is stated. It is not a case where the interaction is repeatedly done. Therefore, charges under Sections 354-A & 354B are not established as per the enactment.

4. Again it is not a case that the prosecutrix was deprived to go to any direction and there is nothing that her movements were restricted by respondent Pankaj Thakur. Threatening is also not established against the said respondent. Respondent Pankaj Thakur was also charged for commission of offence under Section

8 of POCSO Act. Section 8 of the said Act is punishment clause while Section 7 is defined on sexual assault, which may read as under:

“7. Sexual Assault.- Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”

5. From the evidence, there is no iota of evidence regarding sexual assault. Looking to the entire evidence, no debatable case is made out to grant leave.

6. Accordingly, the application for grant to leave stands rejected.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**