

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.M.P. No. 384 of 2018**

- State Of Chhattisgarh Through Police Station Balco Nagar District Korba Chhattisgarh.

---- Petitioner**Versus**

- Nitin Chourasiya S/o Tulsi Chourasiya Aged About 31 Years R/o Depot Colony, Rampur, Quarter No. C/9 Through Police Out Post Rampur, Police Station City Kotwali, District Korba Chhattisgarh,

---- Respondent

For State/Petitioner : Shri Ravindra Agrawal, Govt. Advocate

Hon'ble Shri Pritinker Diwaker and
Hon'ble Shri Sanjay Agrawal, J.J.
Order On Board

09.04.2018**Per Pritinker Diwaker, J.**

1. Present petition, seeking leave to appeal, has been filed under Section 378(3) of the Code of Criminal Procedure 1973 (for short, 'the Cr.P.C.'), to assail the impugned judgment and order dated 07.11.2017 passed in ST No.76/2017 by the 2nd Additional Sessions Judge Korba, District- Korba (C.G.), whereby the Court below has acquitted the respondent of the offence under Sections 376, 506-B and 417 of IPC.

2. As per prosecution case, on 30.07.2017 a written report (Ex.P1) was lodged by the prosecutrix (PW1) alleging in it that since June 2012, she was being subjected to physical relation by respondent. She has stated that on being asked the respondent/accused used to evade performance of marriage with

her on one pretext on the other and ultimately married some other girl. It was on his refusal that a written report (Ex.P.1) has been lodged.

3. Based on this written report (Ex.P.1), an FIR (Ex.P.2) was registered against the respondent/accused under Sections 376, 506 of IPC and accordingly the respondent was taken into custody. The trial Court has framed charge under Section 376, 506-B & 417 of IPC.

4. So as to hold respondent guilty, the prosecution has examined as many as 07 witnesses. Statement of respondent was recorded under Section 313 Cr.P.C., in which, he denied all the circumstances appearing against him and pleaded innocence and false implication.

5. By the impugned judgment, the trial Court acquitted respondent mainly on the ground that no case is made out against the respondent.

6. Counsel for the State/petitioner submits that the trial Court has erred in law in acquitting the respondent.

7. We have heard learned counsel for the State and perused the record carefully.

8. Undisputedly, the age of the prosecutrix is 24 years and there is inordinate delay of more than 5 years in lodging the FIR(Ex.P2). During the period of 5 years on several occasions the prosecutrix has allowed respondent to have physical relation with her of her own sweet will. It was only after the respondent married

some other girl, she lodged the written report (Ex.P.1). The statement of prosecutrix does not appear to be trustworthy and does not inspire confidence of this Court as the delay of more than 5 years in lodging the FIR has not been explained properly by the prosecutrix as per requirement of law. After considering the statement of the prosecutrix and other evidence, the trial Court was justified in acquitting the respondent holding the prosecutrix to be a consenting party.

9. After considering the material available on record as well as the elaborate judgment impugned passed by the Court below and being very much conscious of the existing legal position that in an appeal against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration, is not permissible in law, this Court is of the opinion that the judgment impugned acquitting the respondent No.2/accused of the offence under Section 376, 506 -B & 417 of IPC is just and proper and does not call for any interference. Accordingly, the leave as sought for by the petitioner for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed at the admission stage.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Sanjay Agrawal)
Judge