

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 474 of 2018**

State of Chhattisgarh Through Police Station Sirgitti, District Bilaspur
(C.G.) **---- Appellant**

Versus

Shubham Soni, S/o. Shri Sanjay Soni, aged about 22 years, R/o. Chantidih,
Ashok Nagar Chowk, Bilaspur, District Bilaspur (C.G.)

---- Respondent

For the Appellant :- Mr. Vivek Sharma, Govt. Advocate
For the Respondent :- None.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

Per Pritinker Diwaker, J
21/08/2018

1. Considering the fact that the record of the trial Court has been received, the default as pointed out by the Registry is overruled.
2. State counsel submits that there is delay in filing the petition.
3. After hearing learned counsel for the State, delay in filing the present petition is condoned.
3. Heard on admission.
4. The present petition has been filed by the State seeking leave to appeal under Section 378 (1) of the code of Criminal Procedure, 1973 assailing the judgment and order dated 21.07.2017 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 Bilaspur (henceforth 'the Act of 1989') in Special Criminal Case No. 24/2017, acquitting the accused/respondent of the

charge under Sections 363,366,376(1) of the IPC; Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) and Section 3(1) (a-i) (a-ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Brief facts of the case is that FIR (Ex.P-1) was lodged by the father of the prosecutrix (PW-4) for the offence under Section 363 of the IPC against the unknown person. Subsequently, the prosecutrix was recovered from the custody of the accused/respondent on 12.02.2017. Based on her statement, the challan was filed before the Court below and the accused/respondent was prosecuted. While framing of charges, the trial Judge framed charges against the accused/ respondent under Sections 363,366,376(1) of the IPC; Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act) and Section 3(1) (a-i) (a-ii), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. So as to hold the respondent guilty, the prosecution has examined 8 witnesses. Statement of the respondent/accused was also recorded under Section 313 of the Cr.P.C, wherein he pleaded innocence and false implication. By the impugned judgment the trial judge after hearing the parties and considering the entire material on record acquitted the accused/respondent.

7. Counsel for the State submits that the trial Court has erred in law while acquitting the respondent/ accused.

8. We have heard the parties and perused the records.

9. From the records, it is evident that the prosecutrix (PW-4) has turned complete hostile and has even failed to identify the accused/ respondent. Kiran Kariyare (PW-2) mother of the prosecutrix and Suresh Kumar (PW-1) father of the prosecutrix have also not supported the case of the prosecution and turned hostile.

10. Considering the entire evidence in particularly, the statement of the prosecutrix and the other evidence available on record, the trial Court has acquitted the respondent. We find no illegality in the order impugned acquitting the respondent /accused. The view taken by the trial Court appears to be justified and one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court was fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That apart, the settled legal position that if two reasonable conclusion are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

11. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Vimla Singh Kapoor)
JUDGE