

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 467 of 2018**

- State of Chhattisgarh, Through- Police Station Sakti, District Janjgir-Champa (Chhattisgarh).

---- Applicant**Versus**

- Ved Prakash Shrivastava S/o Late Shri. Bhogilal Shrivastava, Aged about 23 years, R/o Khursipali, P.S. Kharsiya, District Raigarh (C.G.).

---- Respondent

For Applicant/State	:	Shri V. Goverdhan, P. L.
For Respondent.	:	None

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

Judgment on Board**Per Pritinker Diwaker, J****20/06/2018**

1. Heard on admission.
2. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 29.12.2017 passed by First Additional Sessions Judge Shakti, District-Janjgir-Champa in Special Case No. 21/2016 acquitting the accused/respondent of the charges under Sections 363, 366(A) of Indian Penal Code (for short "IPC") and Section 6 of the Protection of Children from Sexual Offences Act (For Short "POCSO Act).
3. Brief facts of the case are that on 20.06.2016, a missing report

(Ex. 11-A) was lodged by father of the prosecutrix alleging that the prosecutrix (PW3) is missing since 19.06.2016. Based on this report, offence under Section 363 of IPC was registered against unknown person. Subsequently, the prosecutrix was recovered from the custody of the respondent/accused on 21.06.2016 and based on her statement the case was registered against the respondent. While framing of charges, the trial Judge framed charges against the respondent under Sections 363, 366-A of IPC and Section 6 of POCSO in alternative 376(1) of IPC.

4. So as to hold the respondent guilty, the prosecution has examined 13 witnesses. Statement of the respondent/accused was also recorded under Section 313 of Cr.P.C. wherein he pleaded innocence and false implication. By the impugned judgment trial Judge after hearing the parties and considering the entire material on record acquitted the respondent of all the offences. Hence, this petition seeking leave to appeal against the acquittal.

5. Counsel for the State submits that the trial Court has erred law in acquitting the respondent. He submits that on the basis of statement of prosecutrix, respondent/accused ought to have been convicted.

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

7. Prosecutrix (PW.3) has not supported the prosecution case and has been declared hostile. She has further stated that she does not know the accused nor any incident with her had taken place. According to her she had never accompanied the accused and even she was not recovered from the custody of accused. There is no legally admissible

document showing the prosecutrix to be minor at the time of incident.

8. Considering the facts and circumstances of the case, 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 has been 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 conclusions 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.

9. 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/-

(Gautam Chourdiya)
JUDGE