

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 524 of 2018**

- State of Chhattisgarh, Through : District Magistrate, Rajnandgaon (C.G.).

---- Petitioner**Versus**

- Yaad Das Sahu @ Pappu Sahu, S/o Avandas Sahu, aged about 26 years, R/o village - Mohda, P.S. Basantpur, District Rajnandgaon (C.G.)

---- Respondent

For Petitioner/State : Shri Ravindra Agrawal, G.A.
For Respondent : None.

Hon'ble Shri Ajay Kumar Tripathi, CJ
Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board**Per Pritinker Diwaker, J****13/07/2018**

1. Heard on I.A.No.01/2018, application for condonation of delay in filing the present petition.
2. For the reasons mentioned in the application, the same is allowed and delay in filing the petition is condoned.
3. Also heard on admission.
4. 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 19.09.2017 passed by Additional Sessions

Judge (FTC), Rajnandgaon (C.G.) in Special Criminal Case No.12/2017 acquitting the accused/respondent of the charge under Sections 376(2) and 506 Indian Penal Code & Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

5. As per the prosecution case, on 27.04.2017 FIR (Ex.P/8) was lodged by the prosecutrix (PW/5), aged about 16 year, alleging in it that in the night intervening 20-21/04/2017 she was subjected to forcible sexual intercourse by the respondent/accused. Based on this report, FIR under Sections 376, 506 IPC and 4 of POCSO Act was registered against respondent/accused.
6. After completing the investigation, charge sheet was filed by the police under Sections 376, 506 IPC and 4 of the POCSO Act followed by framing of charge by the Court below accordingly.
7. So as to hold the accused/respondent guilty, the prosecution has examined 15 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
8. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent as mentioned in para-1 of this judgment. Hence, this petition for leave to

appeal.

9. Counsel for the State submits that the trial Court has erred in law in acquitting the respondent/accused even when there is ample evidence against him.
10. We have heard learned State counsel and perused the material available on record.
11. From the statements of witnesses, in particular the statement of prosecutrix (PW/5) and her mother Parvati Sahu (PW/1), it is apparent that no case is made out against respondent/accused.
12. As in the Court, the prosecutrix and her mother have turned hostile and further considering the medical report of the prosecutrix and her statement, the trial court has come to the conclusion of acquitting the accused/respondent of the charges levelled against him. We find no illegality in the order impugned acquitting the respondent particularly when there is a settled legal position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has 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. 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.

13. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed at the admission stage itself leading to refusal of leave to appeal as sought for by the State.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Pritinker Diwaker)
JUDGE