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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 652 of 2018**

- Ku. Laxmi Kiran Mahant D/o John Ekka, aged about 24 years, resident of Sanjaynagar, Raipur, District - Raipur (C.G.).

----- Petitioner**Versus**

1. State of Chhattisgarh, Through : The Station House Officer, Police Station, Gharghoda, District Raigarh (C.G.)
2. Rajendra Kumar Painkra son of Ramprasad Painkra, aged about 34 years, resident of village Kotba, Police Station-Bagbahar, District Jashpur (C.G.), at present village Kachhari, Sub Health Center, Lailunga, District Raigarh (C.G.)

----- Respondents

For Petitioner	:	Shri Roshan Dubey, Advocate
For Respondent/State	:	Shri Vaibhav Goverdhan, P.L.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board****Per Pritinker Diwaker, J****23/07/2018**

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 03.02.2018 passed by Additional Sessions Judge (FTC), Raigarh (C.G.) in Sessions Trial No.128/2015 acquitting the accused/respondent of the charge under Sections 376 and 313 of Indian Penal Code.
3. As per the prosecution case, on 20.09.2015 written

report (Ex.P/10) was lodged by the prosecutrix (PW/9), aged 36 years, alleging in it that accused/respondent No.2 was residing in her neighbourhood and in November, 2013, he developed physical relation with her on the pretext of marriage. It has been further alleged that in April, 2014 the prosecutrix became pregnant, however, the accused/respondent No.2 gave pill to her as a result of which her pregnancy was terminated. According to the prosecution, even after the abortion, the accused/respondent had physical relation with her and subsequently, accused/respondent got himself transferred and had refused to marry her. Based on this report, FIR (Ex.P/11) was registered against the accused/respondent under Section 376 IPC. After filing of the charge sheet, the trial Judge has framed the charge under Sections 376 and 313 IPC against the accused/respondent No.2.

4. So as to hold the accused/respondent No.2 guilty, the prosecution has examined 12 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.
5. 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.
6. Counsel for the petitioner submits that the trial Court has erred in law in acquitting the accused/respondent No.2 even when there is ample evidence against him.
7. We have heard learned counsel for the parties and perused the material available on record.
8. In the Court, the prosecutrix (PW/9) has stated that accused/respondent expressed his desire of love and

thereafter he also put vermilion into her hairparting and had physical relation with her. She has stated that whenever her niece was not present in her house, accused/respondent used to come and had physical relation with her and this continued from December, 2013 till June, 2014. In April, 2014 she became pregnant, however, she was given medicine by the accused/respondent resulting in her abortion. She has further stated that even after her abortion, their physical relation continued, however, all of a sudden the accused/respondent got himself transferred and thereafter he stopped talking to her. She further states that sometime in the year 2009 she had lodged the report against one police constable and that she was having physical relation with the said police constable from September, 2007 till June, 2009. Considering the age of the prosecutrix and her statement, the trial Court has come to the conclusion that the prosecutrix was a consenting party and no offence is made out against accused/respondent and he has been acquitted of the charges levelled against him by extending him benefit of doubt. 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 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.

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

Sd/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE

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