

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 797 of 2018**

- State of Chhattisgarh, Through : Police Station - Bakarkutta, District Rajnandgaon (C.G.).

---- Petitioner**Versus**

- Omprakash Dhritlahre S/o Late Shri Indraman Dhritlahre, aged about 22 years, R/o village Mohtra, Police Station Saja, District Bemetara (C.G.)

---- Respondent

For Petitioner/State : Shri Rahul Tamaskar, P.L.
For Respondent : None.

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

Judgment on Board**26/07/2018**

1. Heard on I.A.No.01/2018, application seeking condonation of delay in filing the 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 11.12.2017 passed by Additional Sessions Judge, Khairagarh (C.G.) in Sessions Trial No.19/2016

acquitting the accused/respondent of the charge under Sections 363, 366, 376 (2) (J) (N) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

5. According to the case of prosecution, on 09.04.2016 missing report was lodged by Kashiram (PW/2), father of the prosecutrix, alleging in it that the accused/respondent has abducted his daughter (PW/9). Based on this report, FIR (Ex.P/1) under Section 363 IPC was registered against an unknown person. Subsequently, the prosecutrix was recovered from the custody of accused/respondent on 29.10.2016 from the State of Maharashtra. After recording her 164 Cr.P.C. statement and completing investigation, the accused/respondent was prosecuted for the said offence. After filing of the charge sheet, the trial Judge framed the charge under Sections 363, 366, 376 (2) (J) (N) IPC and Section 6 of POCSO Act against the accused/respondent.
6. So as to hold the accused/respondent 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.
7. 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.

8. 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.
9. We have heard learned State counsel and perused the material available on record.
10. From the statement of the prosecutrix (PW/9), it appears that she has not supported the case of the prosecution and has been declared hostile. The prosecutrix had gone to Pune along with other villagers to work as labour and the accused/respondent was also in the group who had not done any act with the prosecutrix. Further, there is no conclusive piece of evidence on record showing the prosecutrix to be minor.
11. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and thus acquitted 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.

12. 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/-

(Pritinker Diwaker)
JUDGE

Sd/-

(Gautam Chourdiya)
JUDGE