

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 926 of 2018**

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

---- Petitioner**Versus**

- Santosh Yadav S/o Shri Saadhan Yadav, aged about 24 years, resident of ward No.6, Sakti, District Janjgir Champa (C.G.)

---- Respondent

For Petitioner/State : Shri Adil Minhaj, P.L.
For Respondent : None

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

Judgment on Board

Per Pritinker Diwaker, J
25/07/2018

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 27.01.2018 passed by Special Judge (SC/ST Act), Janjgir (C.G.) in Special Sessions Trial No.28/2016 acquitting the accused/respondent of the charge under Sections 342, 376 IPC and 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989.

3. As per the prosecution case, on 26.09.2016 FIR (Ex.P/2) was lodged by the prosecutrix (PW/1) alleging in it that on that day between 9.00 - 11.00 PM the accused/respondent called her to his house and committed forcibly sexual intercourse. Based on this, FIR (Ex.P/2) was registered against the accused/respondent under Sections 342, 376 IPC and 3 (1) (xii) of SC/ST Act. After filing of the charge sheet, the trial Judge has framed the charge under Sections 342, 376 IPC and 3 (2) (v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the accused/respondent.
4. 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.
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 State submits that the trial Court has erred in law in acquitting the accused/respondent 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. Prosecutrix (PW/1), though in examination-in-chief, has stated that she was subjected to forcibly sexual intercourse by the accused/respondent, but in cross-examination, she admits that in the year 2012 also she had lodged the report against accused/respondent for committing rape upon her in which he has been acquitted. She has further admitted the fact that on many occasions they used to call each other to meet, had physical relation and that she was having affair with accused/respondent. She has also admitted that when she was subjected to physical relation by the accused/respondent, she did not offer any protest there against and had my family members not been aware about the incident, she would not have lodged the report. She has also stated that she wants to marry with accused/respondent but as her family members are not agreed, her marriage is not being solemnized with the accused/respondent. 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 whatsoever 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 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.

9. 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