

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 950 of 2018

- State Of Chhattisgarh Through The Police Station Thankhamahriya, District Bemetara Chhattisgarh, District : Bemetara, Chhattisgarh

---- Petitioner

Versus

- Nitesh Bhardwaj S/o Shri Kanhaiya Bhardwaj Aged About 26 Years R/o Ward No. 36, Bhadrpara Balco Nagar Korba (New Guru Ghasidas Chowk), Police Station Balco Nagar, District Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Respondent

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

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Smt. Justice Rajani Dubey

Order on Board by Pritinker Diwaker, J.

27.08.2018

Considering the fact that the record of the trial court has been received default as pointed out by the Registry is overruled.

Heard on admission.

This petition filed under Section 378(3) of the Code of Criminal Procedure assailing the impugned judgment and order dated 22.02.18 passed by the Special Judge (POCSO Act)/Additional Sessions Judge, Bemetara in Special Sessions Case No.13/2015 whereby the court below has acquitted the respondent of the offence under Sections 363, 366(A) & 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act.

2. As per prosecution case on 04.09.2015 a missing report Ex.P-

38 was lodged by father of the prosecutrix Ram Lochan Sharma (PW-3) alleging that the prosecutrix is missing since 31.08.2015. Based on this FIR offence under Section 363 IPC was registered against unknown person. Prosecutrix vide Ex.P-14 was recovered from the custody of accused/appellant on 13.07.16 and after recording her statement, respondent/accused was tried under Sections 363.366.376 IPC read with Section 6 of the POCSO Act.

3. After framing of the charge in relation to the above offence, prosecution has examined ten witnesses. Statement of the accused/respondent was also recorded under Section 313 Cr.P.C. in which he pleaded his innocence and false implication in the case.

4. By the impugned judgment, the trial Judge has acquitted the accused/respondent of the offence as mentioned above.

5. Counsel for the petitioner/State submits that the court below has erred in law in acquitting the respondent.

6. Heard counsel for the State/petitioner and perused the record.

7. Prosecutrix (PW-1), has turned complete hostile and has not supported the prosecution case. She has stated that she left her house after having quarrel with her parents and had gone to her friends house. There is no legally admissible evidence showing her to be minor.

8. Considering the statement of the prosecutrix and the evidence related to her age and other evidence, the trial court has come to the conclusion that the offence under Sections 363,366(A) & 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act as

alleged by the prosecutrix is not made out against the respondent.

8. Thus after hearing counsel for the parties and considering the material available on record as well as the elaborate judgment impugned passed by the Court below, and being very much conscious of the existing legal position that in an appeal/revision against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate/revisional Court taking the other possible view into consideration, is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence under Sections 363,366(A) & 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act is just and proper and does not call for any interference. Accordingly, the leave as sought for by the petitioner for registration of appeal against the judgment of acquittal is hereby refused.

Petition is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Rajani Dubey)
Judge