

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 961 of 2018**

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

Versus

Brajesh Kumar Vaishnav, S/o Radhe Shyam Vaishnav, Aged About 29
Years, R/o Village Siladehi, Police Station Birra, District- Janjgir-Champa
(C.G.) **---- Respondent**

For State/ Petitioner : Mr. Vinod Kumar Tekam, PL.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****24/10/2018**

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of K.P. Tandan.
2. For the reasons mentioned in the application and as per the law laid down by Hon'ble the Apex Court in the matter of **State of Haryana Vs. Chandra Mani & others** reported in **(1996) 3 SCC 132**, the delay of 39 days in filing the petition is condoned.
3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against judgment dated 19.12.2017 passed by Special Judge (POCSO Act), Janjgir, District- Janjgir-Champa (C.G.) in Special Criminal Case No. 26/2016, wherein the said court acquitted the respondent for commission of offence under Sections 354 (A) & (B) of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012.
5. Munna Lal Dadsena (PW-6) is Head Master of Government Middle School, Siladehi. As per version of this witness, date of birth of prosecutrix is mentioned in the said school register as

15.07.2000, but in his cross-examination, he deposed that he is unable to explain on what basis date of birth is recorded. Person who recorded the date of birth was not produced before the trial court. Person on whose instance, date of birth was recorded has also not been examined before the trial court.

6. No date of birth certificate was produced and no radiological examination was conducted in the present case, therefore, it is not proved that the prosecutrix was below 18 years on the date of incident i.e. 15.05.2016. Prosecutrix has not supported version of the prosecution. As per version of this witness, one dispute arose between family members of both side regarding transaction of money and same version is repeated by Dvasbai (PW-2) who is mother of the prosecutrix. No other person is examined to establish charges framed against the respondent.
7. Looking to the entire evidence, it is not established that any criminal act was committed by the respondent. The trial court has elaborately discussed the entire evidence and opined that the charges are not established and this Court has no reason to record contrary finding. It is not a case where respondent should be called for hearing again for full consideration of this petition. Accordingly, application for grant of leave to appeal is rejected.
8. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge