

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1269 of 2018**

State Of Chhattisgarh Through District Magistrate District Janjgir Champa,
Chhattisgarh.

---- Petitioner**Versus**

Nakul Prasad @ Sadhu Tandan S/o Kanak Prasad Tandan, Aged About 26
Years R/o Village Bhuigaon, P. S. Pamgarh, District Janjgir Champa,
Chhattisgarh.

---- Respondent

For Petitioner/State : Shri Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

29/8/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by the Hon'ble Apex Court in the matter of State of Haryana Vs. Chandra Mani & Ors., (1996) 3 SCC 132, delay of 166 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (3) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the judgment dated 9th October, 2017 passed by the Additional Sessions Judge (FTC), Sessions Division, Janjgir Champa (CG) in ST No.108/2014,

wherein the said Court has acquitted the non-applicant of the charges under Section 363 and 366 of the I.P.C.

5. Sharda (PW1) is mother of the prosecutrix and as per her version (para 7), the Teacher has recorded date of birth of the prosecutrix on his own will. From the statement of this witness, date of birth of the prosecutrix is not established. Ramsingh Paikara (PW3) is the Headmaster of Primary School, Bhatapara. He also deposed that he did not know as to who recorded the date of birth of the prosecutrix. No birth certificate is produced before the trial Court and no radiological examination is conducted to ascertain the age of the prosecutrix. From the entire evidence it is not established as to what is the exact date of birth of the prosecutrix and therefore, it is not proved that on the date of offence i.e. 3.1.2014, the prosecutrix was minor or below 18 years of age.

6. For commission of offence under Section 363 I.P.C. it has to be established that the prosecutrix was minor and was in custody of lawful guardianship, but that is not established and accordingly offence under Section 363 I.P.C. is also not established. Sharda (PW1) who is mother of the prosecutrix deposed that the prosecutrix was living with the non-applicant as his wife. Bhaiyaram (PW4) deposed on same line. Samme Yadav (PW6) and Shanti Bai (PW9) have also deposed on same line. From the evidence of these witnesses, it is established that the prosecutrix was living with the non-applicant as his wife. From their evidence it is not established that the prosecutrix was minor, therefore, living a major on her own will is not an offence under Section 366 IPC. As the prosecutrix has died in the house of the non-applicant, his evidence is not on record, therefore, it cannot be concluded that the non-applicant abducted her with

intent to compel her to marry or forced her to illicit intercourse. The trial Court has evaluated the evidence in its entirety and this Court has no reason to interfere with the finding recorded by the trial Court. Accordingly, the prayer for leave to appeal is rejected.

7. Consequently, Cr.M.P. stands dismissed. Sd/

(Ram Prasanna Sharma)

Judge