

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1294 of 2018**

State of Chhattisgarh, Through- Police Station Bodhghat, District Bastar (C.G.).

---- **Petitioner**

Versus

Akash Mallai @ Chhotu, S/o Devendra Mallai, Aged About 21 Years
R/o Ward Gandhinagar, Sadar Vallabh Bhai Patel Ward, Jagdalpur
Police Station Bodhghat District Bastar (C.G.).

---- **Respondent**

For State/ Petitioner : Mr. Ramakant Pandey, Panel Lawyer.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

27/08/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Hem Sagar Sidar.
2. For the reasons mentioned in the application, the same is allowed and delay of 25 days in filing the petition is condoned.
3. Also heard on admission.
4. This petition is preferred against judgment dated 28.02.2018 passed by Additional Sessions Judge (FTC), Bastar at Jagdalpur (C.G.) in Sessions Trial No. 78/2017 wherein, the said court acquitted the respondent for commission of offence under Section 363, 366-A of IPC, 1860.
5. Section 363 of IPC is punishable for kidnapping which is defined in Section 361 of IPC. As per provisions of Section 361, whoever takes or entices minor under 18 years of age. If she is female, out of keeping of the lawful guardian of such minor without consent of such guardian, is said to have committed this offence.

6. In the present case, father of the prosecutrix is not examined. Basanti (PW-2) is mother of the prosecutrix, but she did not state about date of birth of the prosecutrix. She has not deposed that she admitted the prosecutrix into any school. Smt. Kavita Nirmal John (PW-5) is teacher of middle school, Frezarpur and as per statement of this witness, according to school register, date of birth of the prosecutrix is mentioned as 04.07.2001. As per version of this witness, she is not able to say on what basis the date of birth is recorded. School register of any primary school like nursery or other is not submitted before the trial court.
7. In absence of any evidence as to who admitted the prosecutrix in the school, it is not established that date of birth mentioned in the school is based on any birth certificate. No redological evidence is adduced to ascertain age of the prosecutrix. In absence of basic document, it is not established that 04.07.2001 is date of birth of the prosecutrix.
8. In the present case, date of incident is 20.03.2016. The prosecution is under obligation to establish that on the date of incident the prosecutrix was below 18 years but from oral or documentary evidence, it is not established that she was below age of 18 years and she was minor. Minority is not proved therefore, offence under Section 363 is not established.
9. From evidence of the prosecutrix, it is clear that she accompanied with the respondent on more than one occasions. From her version, it is not established that appellant had any intention to compel her to marry or force to illicit intercourse. Evidence on this count is lacking. Looking to evidence of the prosecutrix, the trial court elaborately discussed the other evidence and came to

conclusion that the prosecutrix is not stable to her statement and offence charged is not established.

10. Therefore, finding of the trial court is based on proper marshaling of evidence and when respondent has suffered full trial in one court, looking to the entire evidence, it would not be appropriate for this Court to summon him again.
11. In view of the above, the petition is liable to be and is hereby dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge