

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1399 of 2018

- State Of Chhattisgarh Through The Incharge Police Station Bandaji, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioner

Versus

- Damrudhar Mourya S/o Samuram Mourya Aged About 22 Years Caste Muriya, R/o Village Kumhli Chihlagudapara, Police Station Bandaji, District Bastar, Chhattisgarh., District : Bastar(Jagdalpur), 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.

28/08/2018

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

Heard on I.A. No. 01/18, application seeking condonation of delay in filing the present petition.

For the reasons mentioned in the application, the same is allowed. Delay in filing the petition is condoned.

Also heard on admission.

This petition filed under Section 378(3) of the Code of Criminal Procedure assailing the impugned judgment and order dated 16.03.18

passed by the Additional Sessions Judge (FTC)/ and Special Judge (POCSO) Bastar and Jagdalpur in Special Sessions Case No.31/2017 whereby the court below has acquitted the respondent of the offence under Sections 366 & 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act.

2. As per prosecution case mother of the prosecutrix lodged a written report alleging that on 20.08.17, prosecutrix had gone to the Tahsil office for getting her certificate prepared but thereafter she did not return and later she came to know that the appellant and the prosecutrix have eloped. On 27.08.2017 prosecutrix was found in the company of the accused/appellant. On the report of mother of the prosecutrix offence under Sections 366 and 376 IPC and Section 6 of the Protection of Children from Sexual Offences Act was registered against the accused/appellant.

3. After framing of the charge in relation to the above offence, prosecution has examined fourteen 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-5), has turned complete hostile and likewise her parents and other important witnesses have also not supported

the prosecution case.

8. Considering the statement of the prosecutrix, the trial court has come to the conclusion that the offence under Sections 366 & 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.

9. 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 366 & 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

