

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1462 of 2018**

State of Chhattisgarh, Through- The Incharge, Police Station
Kotwali, District- Rajnandgaon (C.G.)

---- Petitioner**Versus**

Piyush Sharma, S/o Ashok Sharma, Aged About 25 Years, R/o-
Punam Colony, Ward No. 19, House No. 290, P.S. Kotwali, District-
Rajnandgaon (C.G.)

---- Respondent

For State/ Petitioner : Mr. Lav Sharma, Panel Lawyer.
For Respondent : None.

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****04/10/2018**

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition which is supported with an affidavit of Soukat Ali.
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 32 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 27.02.2018 passed by Additional Sessions Judge (FTC), Rajnandgaon (C.G.) in Special Criminal Case No. 70/2014, wherein the said

court acquitted the respondent for commission of offence under Section 294 & 354(A) of IPC and under Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act, 2012").

5. In the present case, as per version of the prosecutrix (PW-2), the respondent assaulted her and torn her cloth. The torn cloth was not seized during investigation and after assessment of the entire evidence, the trial court opined that this part of the evidence is not substantiated by corroborating piece of evidence, therefore, charge under Section 354(A) of IPC is not established.
6. To establish charge under Section 354(A) of IPC, the prosecution is under obligation to prove that the respondent has committed physical contact and advances involving unwelcome and explicit sexual overtures. The total evidence which is adduced by the prosecution is only tearing of cloth, but the said cloth is not seized, therefore, finding of the trial court is not liable to be interfere with. Again, physical contact with intention to disrobe her is not established from the evidence of prosecutrix. The trial court has elaborately discussed the issue and recorded finding of acquittal for commission of offence under Section 354(A) of IPC and this Court has no reason to record contrary finding.
7. Section 12 of the POCSO Act, 2012 is punishable clause for sexual harassment and sexual harassment is defined in Section 11 of the said act. After going through the entire

section, this Court is of the view that any of sub-clause is not substantiated by evidence of the prosecutrix and Section 12 of the POCSO Act, 2012 is also not established.

8. So far as, offence under Section 294 of IPC is concerned, the prosecutrix has not stated in her deposition regarding obscene words. The appellant is charged under Section 294 of IPC, the essence of the crime under Section 294 of IPC consists in creating a public nuisance which because of its gravity being of a public nature may endanger public peace. In order to bring home the guilt of the accused for an offence under Section 294 of IPC, the prosecution has to establish that the words uttered were obscene. The test of obscenity is whether the tendency of the matter charges as obscenity is to be deprave and corrupt those whose minds are open to such immoral influences.
9. Filthy abuses are not uncommon. It had no more significance than mere platitudinous utterances signifying the enraged state of the person's mind. In the case in hand, the words uttered by the respondent are not clear, therefore, the words have no literal significance and it cannot fall in the purview of obscene words. From evidence, it is not established that the offence under Section 294 of IPC is made out.
10. In absence of any words uttered by the respondent, the trial court was not in position to hold whether all the words were obscene or not. Looking to the entire evidence adduced by

the prosecution, charge under Section 294 of IPC is also not established.

11. In overall assessment of entire evidence, this Court has no reason to substitute any contrary finding. It is not a fit 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.
12. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge