

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1557 of 2018

- State Of Chhattisgarh Through Police Station Korar, District Uttar Bastar Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Petitioner

Versus

- Dileshwar Nishad S/o Shri Shivprasad Nishad Aged About 22 Years R/o Village Aawaspara Korar, Police Station Korar, District Uttar Bastar Kanker Chhattisgarh, District : Kanker, Chhattisgarh

---- Respondent

For Petitioner/State	: Shri Neeraj Mehta, P.L.
For Respondent	: None present.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Smt. Justice Rajani Dubey

Order on Board by Pritinker Diwaker, J.

06/09/2018

Heard on I.A. No. 01, 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 05.04.2018 passed by the Special Judge (Atrocities) Uttar Bastar, Kanker in Special Criminal Case No.36/2017 whereby the court below

has acquitted the respondent/accused of the offence under Sections 363,366,376 & 344 IPC and Section 3(2)(v)(A) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act.

As per prosecution case, report was lodged by father of the prosecutrix alleging that the prosecutrix is missing since 17.04.2017 and that she appears to have been abducted. During investigation, it was revealed by the police that the prosecutrix is living in a different village along with the respondent. She was recovered from the custody of the respondent and based on her statement, respondent was prosecuted for the offence under Sections 363, 366,376 and 344 IPC, Section 3(2)(v)(A) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act and Section 4 of the Protection of Children from Sexual Offences Act.

So as to hold the respondents/accused guilty, 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.

By the impugned judgment, the trial Judge has acquitted the accused/respondent of the offence as mentioned above.

Counsel for the petitioner/State submits that the court below has erred in law in acquitting the respondent.

Heard counsel for the State/petitioner and perused the record.

During trial the prosecutrix has turned hostile and has stated that she had performed marriage with the respondent. Considering the evidence of the prosecutrix and other related witnesses, the trial court

has come to the conclusion that no evidence whatsoever has been adduced against the accused/respondent and therefore the respondent/accused is liable to be acquitted.

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, no illegality or infirmity is noticeable in the conclusion drawn by the court below acquitting the accused. Even otherwise keeping in mind the material on record leads to two possible views the one favouring the accused has to be preferably taken, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offence under Sections 363, 366, 376 and 344 IPC, Section 3(2)(v)(A) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act and Section 4 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 and the petition is accordingly dismissed.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(Rajani Dubey)
Judge