

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1570 of 2018

- State Of Chhattisgarh Through Police Station Jashpur District
Jashpur Chhattisgarh, District : Jashpur, Chhattisgarh

---- Petitioner

Versus

- Dubendra Prasad @ Dubraj @ Kari Lohar S/o Shri Kesho Prasad
Aged About 22 Years R/o Chadiya, Police Outpost Manora, Police
Station Jashpur District Jashpur Chhattisgarh, District : Jashpur,
Chhattisgarh

---- Respondent

For Petitioner/State	: Shri Adil Minhaj, 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.

24/09/2018

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

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

05.12.2017 passed by the Special Judge (SC/ST (Prevention of Atrocities) Act 1989 Jashpur in Sessions Trial No.11/2017 whereby the court below has acquitted the respondent of the offence under Sections 363,366-A and 376 (2)(n) IPC,Section 6 of the Protection of Children from Sexual Offences Act and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

As per prosecution case, on 14.5.2016, FIR Ex. P-7 was lodged by father of the prosecutrix (PW-2) alleging that since 04.04.2016 prosecutrix has left the house and did not return. He has stated that earlier also prosecutrix was allured by the accused and this time it is the accused who could have done the same. Based on this FIR under Section 363 IPC was registered against the respondent/accused. On 7.06.17, the prosecutrix was recovered from the custody of the accused. After her statement, accused was tried for the offence under Sections 363, 366-A and 376 (2)(n) IPC, Section 6 of the Protection of Children from Sexual Offences Act and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989.

So as to hold the accused/respondent guilty, prosecution has examined 19 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 the course of trial, not only the prosecutrix who have turned hostile and even her parents have also turned hostile. There is no legally admissible evidence that the prosecutrix was minor. Considering the statement of the prosecutrix and other relevant factors, the trial court has come to the conclusion that no evidence whatsoever has been adduced against the accused/respondent and therefore he 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-A and 376 (2)(n) IPC,Section 6 of the Protection of Children from Sexual Offences Act and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) 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