

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1596 of 2018**

- State of Chhattisgarh, through- Police Station Kusmi, District-Balrampur Ramanujganj (Chhattisgarh).

---- Petitioner

**Versus**

- Ashwin Tirkey, S/o Sube Tirkey, aged about 22 years, resident of Village Karradand, Madguri, Police Station Kusmi, District-Balrampur, Ramanujganj (Chhattisgarh).

---- Respondent

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| For Petitioner/State | : | Shri Vivek Sharma, G.A. |
| For Respondent       | : | None.                   |

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**Hon'ble Shri Justice Pritinker Diwaker &**  
**Hon'ble Shri Justice Gautam Chourdiya**

**Judgment on Board****Per Pritinker Diwaker, J.****14/09/2018**

1. Considering the fact that the record of the trial Court has been received, the default as pointed out by the Registry is overruled.
2. Heard on admission.
3. The present petition has been filed by the State seeking leave to appeal under Section 378 (3) of the code of Criminal Procedure, 1973 assailing the judgment and order dated 21.05.2018 passed by Additional Sessions Judge Ramanujganj, District- Balrampur in Sessions Trial No. 426/2012 acquitting the accused/respondent of the charge under Sections 376 of Indian Penal Code.
4. According to prosecution case, on 05-9-2012, a written report (Ex- P/1) was lodged by the prosecutrix (PW-1) aged about 20

years alleging in it that on 21. 03. 2012 the accused by alluring her, took her to several places and during this period he had physical relation with her. She has alleged that when she returned alongwith accused, her mother took her to her parental house and thereafter, FIR (Ex.P/2) was registered against the accused/respondent. After completion of investigation, charge sheet was filed and while framing the charge, the trial Judge has framed the charge against the accused/respondent under Section 376 of IPC.

5. So as to hold the accused/respondent guilty, the prosecution has examined as many as 11 witnesses. Statement of the accused/respondent was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication.
6. The trial Court after hearing counsel for the respective parties and considering the material available on record has acquitted the accused/respondent as mentioned in para-1 of this judgment. Hence, this petition for leave to appeal.
7. Learned counsel for the State submits that the trial Court has erred in law in acquitting the accused/respondent.
8. We have heard learned State counsel and perused the material available on record.
9. From the material available on records, it is apparent that for about six months prosecutrix allowed the accused to have physical relation with her and she had never resisted or offered any protest to the act of the accused. The prosecutrix visited several places alongwith the accused and thus apparently she was a consenting party to the act of the accused and undisputedly prosecutrix was major at the time of incident.
10. Considering the statement of the prosecutrix and other evidence, in particular the evidence related to her age and her consenting

act, the trial court has come to the conclusion that the prosecutrix was a consenting party to the act of the accused and thus acquitted the accused/respondent. We find no illegality in the order impugned acquitting the respondent. The view taken by the trial Court appears to be justified and one of the possible view. The prosecution thus utterly failed in proving its case beyond reasonable doubt and the trial Court has been fully justified in recording the finding of acquittal which is based on proper appreciation of evidence available on record. That, apart, the settled legal position that if two reasonable conclusions are possible on the basis of evidence on record the appellate Court should not disturb the finding of acquittal recorded by the trial Court. Furthermore, in case of appeal against the acquittal the scope is very limited and interference can only be made if finding recorded by the trial Court is highly perverse or arrived at by ignoring the relevant material and considering the irrelevant ones. In the present case, no such circumstance is there warranting interference by this Court.

11. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance, the same is liable to be and is hereby dismissed at the admission stage itself.

Sd/-

**(Pritinker Diwaker)**  
**JUDGE**

Sd/-

**(Gautam Chourdiya)**  
**JUDGE**