

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1613 of 2018**

- The State of Chhattisgarh, Through : Outpost-Dokada, Police Station Kansabel, District Jashpur (CG).

---- Applicant**Versus**

- Shivshankar Chouhan S/o Kunjbihari Chouhan, aged about 24 years, Caste : Gada, R/o Kekrabhaat, Police Station Dabhara, District Janjgir Champa (CG)

---- Respondent

For Petitioner/State : Shri Ramakant Mishra, Dy.A.G.
For Respondent : None.

**Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt Justice Rajani Dubey**

Judgment on Board**22/10/2018**

1. Heard on I.A.No.01/2018, application seeking condonation of delay in filing the petition.
2. Upon due consideration of the cause shown in the application, we are inclined to condone the delay.
3. I.A.No.01/2018 is allowed. Delay in filing the petition is condoned.
4. Also heard on admission.
5. 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 16.11.2017 passed by Special Judge (Constituted under Protection of Children from Sexual Offences Act) (F.T.C.), Jashpur (C.G.), in Special POCSO Case No.22/2017 acquitting the accused/respondent of the charge under Sections 363, 366(A), 376(2)(N) of IPC and 6 of POCSO Act.

6. Learned State counsel submits that even though the school records were produced which proved the date of birth of the prosecutrix to be 02.04.2000, the learned trial Court acquitted the appellant holding that the prosecution has failed to prove by clinching evidence that on the date of commission of alleged offence the prosecutrix was less than 18 years of age.
7. We have gone through the impugned judgment and find that the learned trial Court, in order to come to the conclusion that the prosecution has failed to prove by conclusive evidence that the prosecutrix was less than 18 years of age on the date of commission of offence, has taken into consideration the evidence of the prosecutrix's father, that the prosecution failed to produce Dakhal Kharij Register at the time of admission of the prosecutrix in Class-I and also the prosecution evidence that prior to that she had already studied in another nursery for two years and that there is no other clinching evidence either in the form of Kotwari register or ossification test to conclusively hold that the

prosecutrix was less than 18 years of age on the date of commission of offence. We also find that the entire case of the prosecution rests only on the age of the prosecutrix because the prosecutrix had not alleged that she was subjected to rape against her wishes. Rather, the prosecutrix appears to be having an affair with the appellant. We find no illegality in the order impugned acquitting the respondent.

8. Accordingly, the CRMP preferred by the State/applicant is bereft of any substance and, therefore, the same is liable to be and is hereby dismissed at the admission stage itself leading to refusal of leave to appeal as sought for by the State.

Sd/-

(Manindra Mohan Shrivastava)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE