

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.1478 of 2017**

- State Of Chhattisgarh Through- the Incharge Police Station Janjgir, Distt. Janjgir-Champa (CG)

---- **Petitioner****Versus**

- Santosh Pandey, S/o. Dwarika Nath Pandey, Age 49 years, R/o. Village Sivni, Azad Chowk, Police Outpost Naila, Police Station Janjgir, Distt. Janjgir-Champa (CG)

---- **Respondent**

For the Petitioner/State : Shri Sanjeev Pandey, Govt. Advocate
 For the respondent : Shri Barun Kumar Chakrabarty and Shri Dharmesh Srivastava, Advocates

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

28.8.2018.

1. Heard on IA No.01/17 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by Hon'ble Supreme Court in the matter of **State of Haryana Vs. Chandra Mani & Ors.** reported in **(1996) 3 SCC 132**, delay of 44 days in filing the petition is hereby condoned.
3. Also heard on application for grant of leave to appeal under Section 378(3) of CrPC.
4. This is an appeal against judgment dated 16.5.2017 passed by Additional Sessions Judge (FTC), Janjgir Distt. Janjgir Champa (CG) in Session Trial No.06/2016 for commission of offence under Section 8 of Protection of Children from Sexual Offences Act, 2012 and under Sections 354 & 506 Part-II of the Indian Penal

Code for commission of sexual assault as defined under Section 7 of the POCSO Act, 2012 and for outraging the modesty of the prosecutrix and for threatening to kill her.

5. For commission of offence under POCSO Act, it has to be established that on the date of incident, the prosecutrix was minor i.e. below 18 years of age. In the present case, date of incident is 22.02.2016. Ajay Kant Tiwari (PW-1) who is teacher of Govt. Primary Girls School, Sivni deposed that entry made in the school register was not made by him and he is also unable to state on whose instance the said entry was made. In absence of the evidence, the school register is not proved. Suryanarayan Rathore (PW-5) is the father of the prosecutrix. As per the version of this witness (para 5), the prosecutrix was born in village Chindpur, but they did not record the date of birth of the prosecutrix in the register maintained by the Kotwar of village Chindpur. Oral statement made by this witness is not a proof of age as date of birth was not recorded in birth register maintained by the Kotwar. Again oral evidence of Sarojani (PW-7) who is mother of the prosecutrix is also not proving the age of the prosecutrix because the same is not stated on the basis of any birth certificate. Radiological examination of the prosecutrix is not done and the evidence in this account is lacking. In absence of any documentary and medical evidence, date of birth of the prosecutrix is not established. Therefore, it cannot be held that on the date of incident she was below the age of 18 years and was minor.

6. The date of incident is 22.02.2016 while report was lodged on 07.3.2016 i.e. after 14 days. No reason has been assigned by any of the witnesses for delayed report. There is no cogent reason for suppressing the incident for two weeks. If the delay is properly explained, the story put forth by the witnesses could have been evaluated on its face value, but when the delay is not explained, the statement made by the witnesses is under cloud. Therefore, the evidence regarding outraging the modesty of the prosecutrix is not established beyond the shadow of doubt.

7. As per the version of the prosecutrix (PW-4) the respondent threatened that if she narrate the story to anybody, he will kill her. It is not the statement that the respondent was determined to execute the threat. For establishing the offence under Section 506 Part-II, it has to be established that the person who gave threat is determined to execute the threat on the spot. In absence of any determination, mere words are sound only and the same is without substance, therefore, charge under Section 506 is not established.

8. The finding of the trial court can be reversed only when it is perverse or irrelevant matter have been taken into account while relevant matters have been brushed aside. In the present case, the trial Court has evaluated the evidence elaborately and after going through the entire evidence and reasoning of the trial Court, this Court has no reason to reverse the finding of the trial Court and substitute the finding of this Court. The finding recorded by the trial Court is not liable to be substituted and not liable to be

interfered with. The respondent has already suffered the trial for long, therefore, it would not be proper for this Court to summon him again.

9. Accordingly, the application for grant of leave is rejected and consequently, the instant CrMP also stands dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE