

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.2270 of 2018**

- State Of Chhattisgarh Through The Incharge Police Station- Chhuikhadan, District- Rajnandgaon, Chhattisgarh.

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

- Shiva Mandavi @ Lallu S/o Rajesh Mandavi, Caste Beldar, Aged About 21 Years R/o Tikripara, Ward No.- 11, Chhuikhadan, Police Station- Chhuikhadan, District- Rajnandgaon, Chhattisgarh.

---- **Respondent**

 For the Petitioner/State : Shri Sanjeev Pandey, Govt. Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

30.11.2018.

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**, the delay of 45 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 petition has been preferred against judgment dated 24.5.2018 passed by Additional Sessions Judge, Khairagarh, Session Division Rajnandgaon (CG) in Special Session Trial No.15/2016 wherein the said Court acquitted the respondent for the charges under Sections 509 read with Section 34 of the Indian

Penal Code, under Section 12 of Protection of Children from Sexual Offences Act, 2012 and under Section 67(B)(e) of the Information Technology Act, 2008.

5. In the present case prosecutrix is PW-5. As per the version of the prosecutrix she was studying in Class-X in Govt. Higher Secondary School, Chhuikhadan. She has a mobile having SIM No.8305520726 in which on 18.8.2016 a call was made from a SIM of 9770974584 by the respondent asking for making physical relation and also made vulgar talks. On 22.8.2016 also he made call and made vulgar talks with her and harassed her. The matter was reported and investigated and after completion of the trial, the Court acquitted the respondent as mentioned above.

6. Learned counsel for the petitioner submits that looking to the statement of the prosecutrix and other supportive piece of evidence, charges levelled against the respondent are established but the trial Court has overlooked the evidence and passed the judgment in mechanical manner which is liable to be reversed.

7. From the entire evidence adduced by the prosecution, it is clear that the case is based on conversation in two mobile phones. One was in possession of the prosecutrix and another one was in possession of the respondent. Though the prosecutrix deposed that the respondent has called her in her mobile phone but in her cross examination (para17) she has stated that it is not known to her from which mobile number he called her. It is not a case where the respondent did anything in the presence of the prosecutrix. The entire case of the prosecution is based on the

conversation made in the mobile phones but from the evidence of the prosecutrix herself it is not established from which mobile number the conversation was made. Conversations in two mobile phones can only be established by the Cyber cell that there was a talk in two mobile phones but the subject matter of the talk cannot be established by the Cyber cell. Even the prosecutrix is not able to establish the mobile number of the respondent.

8. Looking to the factual aspects of the matter, the trial Court recorded acquittal. After reassessing the evidence this Court has no reason to substitute a contrary finding. It is not a case where the respondent should be called for full consideration of the petition.

9. Accordingly, the application for leave to appeal is rejected. Consequently, the CrMP stands dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**