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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.23 of 2018**

- State Of Chhattisgarh Through Outpost Lodam P. S. Jashpur District Jashpur Chhattisgarh

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

- Arun Tirkey S/o Polikar Tirkey Aged About 37 Years R/o Village Bhalmanda Outpost Lodam P. S. Jashpur District Jashpur Chhattisgarh

---- **Respondent**

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

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

29.8.2018.

1. Heard on IA No.01/18 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 64 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 application has been preferred against judgment of acquittal dated 26.4.2017 passed by Sessions Judge, Jashpur, Distt. Jashpur in Session Case No.30/2016 wherein the said Court acquitted the non-applicant for commission of offence under Sections 363 and 370 of the Indian Penal Code.

5. The first question for consideration before this Court is whether the prosecutrix was minor on the date of incident i.e. on 21.9.2015. To substantiate the charges the prosecution has examined as many as 10 witnesses. Ku. Meghavati Bai (PW-2) is the sister of the prosecutrix but she is unable to state the date of birth the prosecutrix. Other witnesses of the locality were also not able to state the date of birth of the prosecutrix. Kaleshwar Ram (PW-3) who is the Head Teacher of Primary School Bhalmanda deposed that date of birth of the prosecutrix is mentioned as 25.6.2005 in the school register but in the cross-examination (para 5) he admitted that elder mother of the prosecutrix brought the prosecutrix to the school for admission and she narrated the date of birth of prosecutrix on imagination. No date of birth certificate was produced and no radiological examination was conducted to ascertain the age of the prosecutrix. From the evidence it is not established that the prosecutrix was below 18 years on the date of incident. Offence under Section 363 IPC can be made out only when the offence of kidnapping is established and for establishing kidnapping from lawful guardianship it has to be established that the female was below 18 years of age and was under lawful guardianship of parents. Since the age is not proved below 18 years, offence punishable under Section 363 IPC is not made out.

6. Prosecutrix (PW-4) was not stable in her statements. In her cross-examination she denied the factum of incident. She deposed that no one transported her from village Bhalmanda.

She was subjected to leading questions by the prosecution side and on reply to questions she stated that Arun and Vikas had taken her to Delhi but from her entire evidence it is not clear whether any threat or force was used or it was a case of abuse of power or inducement. All the ingredients mentioned under Section 370 IPC for trafficking of the person are lacking in the evidence of the prosecution. Other witnesses have also not supported the version of the prosecution. The trial Court after evaluating the entire evidence acquitted the non-applicant and this Court has no reason to interfere with the finding. The non-applicant has already suffered the trial for long and it is not proper for this Court to summon him.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE