

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 78 of 2018**

- State Of Chhattisgarh, Through : P.S. City Kotwali - Balodabazar, District - Balodabazar, Bhatapara (C.G.).

---- Petitioner**Versus**

- Rajkapoor @ Raj Kumar Tandon, S/o Chaindas Tandon, age 21 years, R/o village Kamandih, P.S. City Kotwali, District Balodabazar, Bhatapara (C.G.)

---- Respondent

For Petitioner/State : Shri Ravindra Agrawal, G.A.
For Respondent : None.

Hon'ble Shri Ajay Kumar Tripathi, CJ**Hon'ble Shri Justice Pritinker Diwaker****Judgment on Board****09/07/2018**

1. Heard on admission.
2. 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 10.11.2017 passed by Special Judge (FTC), Balodabazar (C.G.) in Special Sessions Trial No.39/2016 acquitting the accused/respondent of the charge under Sections 363, 366(A) and 376 (2)(n) of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').
3. According to the case of prosecution, on 16.05.2015 FIR

(Ex.P/1) was lodged by Devcharan, father of the prosecutrix, alleging that his daughter was missing since 08.05.2015. Based on this report, FIR under Section 363 IPC was registered against an unknown person. Subsequently, after about a year prosecutrix was recovered from the custody of respondent/accused and based on her statement he was prosecuted for the said offence.

4. After completing the investigation, charge sheet was filed by the police under Sections 363, 366, 376 (2) (n) IPC and 4/6 of the POCSO Act followed by framing of charge by the Court below accordingly.
5. So as to hold the accused/respondent guilty, the prosecution has examined 06 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. Counsel for the State submits that the trial Court has erred in law in acquitting the respondent/accused even when there is ample evidence against him.

8. We have heard learned State counsel and perused the material available on record.
9. From the statement of the prosecutrix (PW/3) and that of her parents, it appears that they have not supported the case of the prosecution and have been declared hostile. The prosecutrix remained in the custody of the respondent/accused for a year in Pune and remained engaged in some labour work.
10. Considering the statement of the prosecutrix and other evidence available on record, the trial court has come to the conclusion that the prosecutrix was a consenting party and thus acquitted the accused/respondent of the charges levelled against him. We find no illegality in the order impugned acquitting the respondent particularly when there is a legal settled position that if on the basis of record two conclusions can be arrived at, the one favouring the accused has to be preferred. Even otherwise, the prosecution thus has 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. 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 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/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Pritinker Diwaker)
JUDGE