

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 783 of 2018

- Applicant

- Pushp Kumar Sahu @ Manmohan Sahu @ Golu S/o. Ramnath Sahu, Aged About 28 Years Temporary Address- House Of Prakash Sarkanda, Distt. Bilaspur, Chhattisgarh, Permanent Address Village- Padampur, Police Station Jarhagaon, District Mungeli, Chhattisgarh.

---- Respondent

For Applicant :- Shri Vikash Shrivastava, PL

**Hon'ble Shri Prashant Kumar Mishra &
Hon'ble Shri Gautam Chourdiya, JJ.**

Order On Board

By

Prashant Kumar Mishra, J.

18/09/2019

1. On due consideration delay of 21 days in filing of Cr.M.P. is condoned. Accordingly, I.A. No.1 of 2018 which is an application for condonation of delay occurred in filing of the Cr.M.P. is allowed.

2. The trial Court has acquitted the accused of the charges under Section 3(1) (w-i) (w-ii) and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short “the Act,1989”)
3. The trial Court has convicted the accused for committing offence under Sections 363, 366, and 376(2) of I.P.C. and under Section 6 of the Protection of Children from Sexual Offences Act, 2012. For the convicted offence, the accused has been sentenced to undergo RI for 10 years for each of the offence with fine of Rs.5000/- for each of the offence, in default to undergo additional RI for 1 month for each of the offence. The sentences have been directed to run concurrently. The default sentence has been directed to run one after another.
4. The accused, a married person, fell in love with the prosecutrix and on his proposal, the prosecutrix accepted the offer and both of them eloped and stayed together after performing marriage at a local temple. They lived as husband and wife for a period of about 20 months. Neither in her case diary statement nor in her statement under Section 164 of Cr.P.C nor in the deposition, prosecutrix would allege that accused committed the offence to humiliate her on the ground that she belongs to Schedule Caste Community.
5. The offence had taken place on 10.03.2015. On the said date the pre-amended provision of Section 3(2)(v) of the Act, 1989

was operative under which it was necessary that the offence should be committed **“on the ground”** that the victim belongs to SC or ST community. The amendment doing away with the necessity of committing the offence **“on the ground”** by replacing it with the words **Knowing** was introduced on 26.1.2016. Thus, as on date of offence it was necessary for the prosecution to prove that the offence under Section 3(2)(v) of the Act, 1989 was committed on the ground that the victim belongs to SC or ST community.

6. There being lack of such ingredients in the prosecution case, the trial Court has rightly held that offence under Section 3(2)(v) of Act, 1989 is not proved against accused.
7. Accordingly, the Cr.M.P. seeking leave to appeal against acquittal under Section 3(2)(v) deserves to be and is hereby dismissed.
8. Nothing observed in this order would effect the Criminal Appeal preferred by the accused challenging the conviction under Section 363, 366, and 376(2) of I.P.C. and under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

SD/-
(Prashant Kumar Mishra)
Judge

SD/-
(Gautam Chourdiya)
Judge