

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1672 of 2019

- Applicant

- Guhadas Mahant S/o Late Baldev Mahant Aged About 65 Years R/o Village Belakachhar, Police Station Balkonagar, District Korba Chhattisgarh.

---- Respondent

For Applicant-State :- Shri Ashish Gupta, PL

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

20/08/2019

1. Heard.
2. On due consideration, delay of 488 days in filing the present Cr.M.P. is condoned. Accordingly, I.A. No.1 stands allowed.
3. The trial Court has convicted the accused for offence under Section 376(2)(झ)(ढ), 506 Part II of IPC and Section 6 of

Protection of Children from Offences Act, 2012 but has been acquitted for the offence under Section 3(2)(v) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act, 1989').

4. This application seeking leave to appeal has been preferred against the acquittal of the accused under Section 3(2)(v) of the Act, 1989 only.
5. While convicting the accused for commission of forcible sexual intercourse the trial Court would record a finding in Para 63 of the judgment that there is no material produced by the prosecution that the accused committed the said offence knowing that the prosecutrix belongs to Scheduled Castes category.
6. We have perused the material available on record particularly the deposition of the prosecutrix wherein she would mention that she is not aware as to which category her caste, *Sarathi (Ghasiya)*, belongs. She is also not aware as to which category the accused, *Mahant (Panika)*, belongs. Thus there is lack of evidence to constitute the ingredients or offence under Section 3(2)(v) of the Act, 1989. Under the said provision it must be proved that the accused committed any offence under the Indian Penal Code punishable with imprisonment for a time of 10 years or more

against the person or property knowing that such person is a member of the Scheduled Castes and Scheduled Tribes or such property belongs to such member.

7. There being no material that the accused was aware of the fact as to the caste status of the prosecutrix, conviction under the said offence may not be permissible.

8. No case for grant of leave to appeal is made out, accordingly, Cr.M.P. is dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Ankit

Sd/-

(Gautam Chourdiya)
Judge